S. Hrg. 99-688

INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD, MA

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

NINETY-NINTH CONGRESS

SECOND SESSION

ON

S. 1452

TO SETTLE INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD, MA,
AND FOR OTHER PURPOSES

APRIL 9, 1986
WASHINGTON, DC

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INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD, MA

WEDNESDAY, APRIL 9, 1986

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:18 p.m., in room 538, Dirksen Senate Office Building, Hon. Mark Andrews (chairman of the committee) presiding.

Present: Senators Andrews, Gorton, and Murkowski.

Staff present: Peter S. Taylor, staff director; Debbie Storey, professional staff member; Michael Mahsetky, staff attorney; Ginny Boylan, staff attorney; Phyllis Thompson, professional staff member; Sheila Rogan, professional staff member; Irene Herder, staff secretary; Mary Jo Vrem, legislative assistant; and Ipo Lung, professional staff member.

Mr. ANDREWS. The committee will come to order.

The hearing this afternoon is on S. 1452, a bill to settle Indian land claims in the town of Gay Head, MA, on Martha's Vineyard.

This legislation would resolve a land claim filed in Federal court in 1974 by the Gay Head Wampanoag Tribe for title to 238 acres of common land presently held by the town of Gay Head.

While this claim is limited to the common lands within the town, the effect of the claim is to cast a cloud on title to other privately owned lands within the town.

The legislation before us today incorporates a joint memorandum of understanding that was signed by the Wampanoag Tribal Council of Gay Head, Inc., the town of Gay Head, the Taxpayers Association of Gay Head, Inc., and the Commonwealth of Massachusetts in November 1983.

It is my understanding that the Department of the Interior did not participate in the negotiations that led to this agreement. The agreement calls for the transfer of 238 acres of common land now held by the town, an acquisition of three parcels of land of the former Strock estate, comprising about 175 acres to be held as settlement lands and 11 acres currently in private ownership.

In addition, the town agrees to transfer a parcel of land, known as the Cook lands, to the tribe.

S. 1452 would authorize the appropriation of $3 million for establishment of settlement funds to carry out the terms of this act. However, it is my understanding that the State of Massachusetts may contribute 50 percent of these funds.

[The text of S. 1452 follows:]

II

99th CONGRESS
1st Session

S. 1452

To settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes.

IN THE SENATE OF THE UNITED STATES

July 17 (legislative day, July 16), 1985

Mr. Kennedy (for himself and Mr. Kerry) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

---

A BILL

To settle Indian land claims in the town of Gay Head, Massachusetts, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Gay Head Wampanoag Indian Claims Settlement Act of 1985".

SEC. 2. CONGRESSIONAL FINDINGS AND DECLARATION OF POLICY.

The Congress hereby finds and declares that—

(1) there is pending before the United States District Court for the District of Massachusetts a lawsuit

that involves Indian claims to certain public lands within the town of Gay Head, Massachusetts;

(2) the pendency of this lawsuit has resulted in severe economic hardships for the residents of the town of Gay Head by clouding the titles to much of the land in the town, including land not involved in the lawsuit;

(3) the Congress shares with the Commonwealth of Massachusetts and the parties to the lawsuit a desire to remove all clouds on titles resulting from such Indian land claim;

(4) the parties to the lawsuit and others interested in settlement of Indian land claims within the Commonwealth of Massachusetts executed a Settlement Agreement which, to become effective, requires implementing legislation by the Congress of the United States and the General Court of the Commonwealth of Massachusetts; and

(5) the town of Gay Head has agreed to contribute approximately 50 per centum of the land involved in this settlement.

SEC. 3. GAY HEAD INDIAN CLAIMS SETTLEMENT FUND.

(a) FUND ESTABLISHED.—There is hereby established within the Treasury of the United States a fund to be known as the "Gay Head Indian Claims Settlement Fund".

Amounts in the fund shall be available to the Secretary to carry out the purposes of this Act.

(b) AUTHORIZATION FOR APPROPRIATION.—There is hereby authorized to be appropriated $3,000,000 for such fund to remain available until expended.

SEC. 4. APPROVAL OF PRIOR TRANSFERS AND EXTINGUISHMENT OF ABORIGINAL TITLE AND CLAIMS OF GAY HEAD INDIANS.

(a) APPROVAL OF PRIOR TRANSFERS.—(1) Any transfer before the date of the enactment of this Act of land or natural resources now located anywhere within the United States from, by, or on behalf of the Wampanoag Tribal Council or the Gay Head Indians, or (2) any transfer before the date of the enactment of this Act by, from, or on behalf of any Indian, Indian nation, or tribe or band of Indians, of any land or natural resources located anywhere within the town of Gay Head, Massachusetts, including any transfer pursuant to any statute of the State, and the incorporation of the town of Gay Head, shall be deemed to have been made in accordance with the Constitution and all laws of the United States that are specifically applicable to transfers of land or natural resources from, by, or on behalf of any Indian, Indian nation, or tribe or band of Indians (including the Trade and Intercourse Act of 1790, Act of July 22, 1790 (ch. 33, sec. 4, 1 Stat. 137), and all amendments thereto and all subsequent versions thereof). Any such transfer and any transfer in implementation of this Act, shall be deemed to have been made with the consent and approval of Congress as of the date of such transfer.

(b) EXTINGUISHMENT OF ABORIGINAL TITLE.—Any aboriginal title held by the Wampanoag Tribal Council, any other entity presently or at any time in the past known as the Gay Head Indians, to any land or natural resources the transfer of which is consented to and approved in subsection (a) is considered extinguished as of the date of such transfer.

(c) EXTINGUISHMENT OF CLAIMS ARISING FROM PRIOR TRANSFERS OR EXTINGUISHMENT OF ABORIGINAL TITLE.—Any claim (including any claim for damages for use and occupancy) by the Wampanoag Tribal Council, the Gay Head Indians, or any other Indian, Indian nation, or tribe or band of Indians against the United States, any State or political subdivision of a State, or any other person which is based on—

(1) any transfer of land or natural resources which is consented to and approved in subsection (a), or

(2) any aboriginal title to land or natural resources the transfer of which is consented to and approved in subsection (b), is extinguished as of the date of any such transfer.

(d) **PERSONAL CLAIMS NOT AFFECTED.**—No provision of this section shall be construed to offset or eliminate the personal claim of any individual Indian which is pursued under any law of general applicability that protects non-Indians as well as Indians.

SEC. 5. CONDITIONS PRECEDENT TO FEDERAL PURCHASE OF SETTLEMENT LANDS.

(a) **INITIAL DETERMINATION OF STATE AND LOCAL ACTION.**—No action shall be taken by the Secretary under section 6 before the Secretary publishes notice in the Federal Register of the determination by the Secretary that—

(1) the Commonwealth of Massachusetts has enacted legislation which provides that—

(A) the town of Gay Head, Massachusetts, is authorized to convey to the Wampanoag Tribal Council the public settlement lands and the Cook lands subject to the conditions and limitations set forth in the Settlement Agreement,

(B) the settlement lands shall be exempt from taxation by the State or any political subdivision of the State to the extent provided in the Settlement Agreement, and

(C) the Wampanoag Tribal Council shall have the authority, after consultation with appropriate State and local officials, to regulate any hunting by Indians on the settlement lands that is conducted by means other than firearms or crossbow to the extent provided in, and subject to the conditions and limitations set forth in, the Settlement Agreement; and

(2) the town of Gay Head, Massachusetts, has authorized the conveyance of the public settlement lands and the Cook Lands to the Wampanoag Tribal Council.

(b) RELIANCE UPON THE ATTORNEY GENERAL OF MASSACHUSETTS.—In making the findings required in subsection (a) of this section, the Secretary may rely upon the opinion of the Attorney General of the Commonwealth of Massachusetts.

SEC. 6. SECRETARY REQUIRED TO PURCHASE AND TRANSFER PRIVATE SETTLEMENT LANDS.

(a) NEGOTATIONS AND SURVEY BY THE SECRETARY.—Within sixty days following the date of publication of findings under section 5(a), the Secretary shall enter into negotiations for the purchase of the private settlement lands on behalf of the tribe at the fair market value of such lands (determined without regard to pending Indian claims). The Secretary, during this time period, shall also cause a survey to be conducted to determine the precise acreage and boundaries of the settlement lands.

(b) ARBITRATION REQUIRED IN CASE OF FAILURE TO ESTABLISH PURCHASE PRICE.—If the Secretary and any owner of private settlement land are unable to agree on fair market value before the end of the ninety-day period beginning on the last day of the sixty-day period described in subsection (a), the fair market value of such land shall be determined by binding arbitration conducted in accordance with the rules and procedures of the American Arbitration Association.

(c) PURCHASE BY THE SECRETARY.—Within sixty days after the price and any other terms for the purchase of the private settlement land has been agreed to under subsection (a) or determined in accordance with subsection (b), as the case may be, the Secretary shall acquire all rights, title, and interest to such private settlement land.

(d) TRANSFER AND SURVEY OF LAND TO WAMPANOAG TRIBAL COUNCIL.—All rights, title, and interest to all private settlement land purchased by the Secretary under this section shall be transferred to the Wampanoag Tribal Council and shall be held by such council in accordance with the provisions of this Act, the Settlement Agreement and any other applicable laws.

(e) PROCEEDINGS AUTHORIZED TO ACQUIRE OR TO PERFECT TITLE.—The Secretary is authorized to commence such condemnation proceedings as the Secretary may determine to be necessary—

(1) to acquire or perfect any right, title, or interest in any private settlement land, and

(2) to condemn any interest adverse to any ostensible owner of such land.

SEC. 7. JURISDICTION OVER SETTLEMENT LANDS; RESTRAINT ON ALIENATION.

(a) LIMITATION ON INDIAN JURISDICTION OVER SETTLEMENT LANDS.—No Indian tribe or band may exercise any form of jurisdiction (whether or not such tribe or band is a federally recognized Indian tribe or band) over any part of the settlement lands, or any other land that may now or in the future be owned by or held in trust for such Indian entity in the town of Gay Head, Massachusetts, except to the extent provided in this Act, the State Implementing Act, or the Settlement Agreement.

(b) RESTRAINT ON ALIENATION—

(1) IN GENERAL.—No right, title, or interest in any settlement land (other than the Cook lands and the West Basin Strip in accordance with paragraph 11 of the Settlement Agreement) may be sold, granted, or otherwise conveyed by the Wampanoag Tribal Council (or, in the case of private settlement land held by the Secretary pursuant to section 6(c) before the transfer of

such land under section 6(d), by the Secretary) to any person other than any Indian tribe or tribal organization in Gay Head, Massachusetts, whose existence is subsequently acknowledged by the Secretary.

(2) PROHIBITED DISPOSITION WITHOUT LEGAL EFFECT.—No disposition and no attempt to make any disposition of settlement land to any person other than any Indian tribe or tribal organization referred to in subparagraph (1) shall have any effect in law or equity.

(3) SUBSEQUENT HOLDER BOUND TO SAME TERMS AND CONDITIONS.—Any tribe or tribal organization which acquires any settlement land from the Wampanoag Tribal Council shall hold title to such land subject to the same terms and conditions as are applicable to such lands when held by such council.

(b) RESERVATIONS OF RIGHT AND AUTHORITY RELATING TO SETTLEMENT LANDS.—No provision of this Act shall affect or otherwise impair—

(1) any authority to impose a lien or temporary seizure on the settlement lands as provided in the State Implementing Act,

(2) the authority of the Secretary to approve leases in accordance with the Act entitled "an Act to authorize the leasing of restricted Indian lands for public, religious, educational, recreational, residential,

business, and other purposes requiring the grant of long-term leases." and approved August 9, 1955 (25 U.S.C. 415 et seq.), as such Act may have been or may be amended; or

(3) the legal capacity of the Wampanoag Tribal Council to grant or otherwise convey—

(A) the right to use the settlement lands to its members,

(B) any easement for public or private purposes in accordance with the laws of the Commonwealth of Massachusetts or the ordinances of the town of Gay Head, Massachusetts, or

(C) title to the West Basin Strip to the town of Gay Head, Massachusetts, pursuant to the terms of the Settlement Agreement.

SEC. 8. MISCELLANEOUS PROVISIONS.

(a) LIMITATION ON LIABILITY OF UNITED STATES TO WAMPANOAG INDIANS UNDER THIS ACT.—Subject to subsection (b), the United States shall have no duties or liabilities with respect to the Wampanaog Tribal Council or any settlement lands after the Secretary has completed any action required under this Act.

(b) RESERVATION OF INDIAN RIGHT TO FEDERAL RECOGNITION.—No provision of this Act shall be construed to affect—

(1) the right of any Indian entity in the town of Gay Head, Massachusetts, to petition the Secretary for Federal recognition of such entity as an Indian tribe, or

(2) the eligibility of such entity, or members of such entity, for services or benefits provided by the United States to federally recognized Indian tribes if the Secretary acknowledges the existence of such entity as an Indian tribe.

SEC. 9. DEFINITIONS.

For the purposes of this Act:

(1) COOK LANDS.—The term "Cook lands" means the lands described in paragraph (5) of the Settlement Agreement.

(2) GAY HEAD INDIANS.—The term "Gay Head Indians" means any Indian tribe, band, group, or nation whether or not considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93–638) or under chapter 67 of title 31, United States Code, or otherwise federally recognized, known as the Gay Head Indians, Gay Head Tribe, Gay Head Wampanoag Tribe, or the Wampanoag Indians of Gay Head, or any other entity, person, or group of persons, or any predecessor or successor in interest or shareholder of any such tribe or

entity, claiming or having tribal status, tribal land, or aboriginal title to any land or natural resources situated in whole or in part in the town of Gay Head, Massachusetts.

(3) LAND OR NATURAL RESOURCES.—The term "land or natural resources" means any real property or natural resources, or any interest in or right involving, any real property or natural resource, including but not limited to, minerals and mineral rights, timber and timber rights, water and water rights, and rights to hunt and fish.

(4) LAWSUIT.—The term "lawsuit" means the action entitled Wampanoag Tribal Council of Gay Head, and others versus Town of Gay Head, and others (C.A. No. 74–5826–McN (D. Mass.)).

(5) PRIVATE SETTLEMENT LANDS.—The term "private settlement lands" means approximately one hundred and seventy-five acres of privately held land described in paragraph 6 of the Settlement Agreement.

(6) PUBLIC SETTLEMENT LANDS.—The term "public settlement lands" means the lands described in paragraph (4) of the Settlement Agreement.

(7) SETTLEMENT LANDS.—The term "settlement lands" means the private settlement lands and the public settlement lands.

(8) Secretary.—The term "Secretary" means the Secretary of the Interior.

(9) Settlement agreement.—The term "Settlement Agreement" means the document entitled "Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts, Indian Land Claims," executed as of November 22, 1983, and renewed thereafter by representatives of the parties to the lawsuit, and as filed with the Secretary of the Commonwealth of Massachusetts.

(10) State implementing act.—The term "State implementing act" means legislation enacted by the Commonwealth of Massachusetts conforming to the requirements of this Act and the requirements of the Massachusetts Constitution.

(11) Transfer.—The term "transfer" includes—

(A) any sale, grant, lease, allotment, partition, or conveyance,

(B) any transaction the purpose of which is to effect a sale, grant, lease, allotment, partition, or conveyance, or

(C) any event or events that resulted in a change of possession or control of land or natural resources.

(12) WEST BASIN STRIP.—The term "West Basin Strip" means a strip of land along the West Basin which the Wampanoag Tribal Council is authorized to convey, under paragraph (11) of the Settlement Agreement, to the town of Gay Head.

(13) WAMPANOAG TRIBAL COUNCIL.—The term "Wampanoag Tribal Council" means the Wampanoag Tribal Council of Gay Head, Incorporated.

SEC. 10. APPLICABILITY OF STATE LAW.

Except as otherwise expressly provided in this Act or in the State Implementing Act, the settlement lands and any other land that may now or hereafter be owned by or held in trust for any Indian tribe or entity in the town of Gay Head, Massachusetts, shall be subject to the civil and criminal laws, ordinances, and jurisdiction of the Commonwealth of Massachusetts and the town of Gay Head, Massachusetts.

SEC. 11. LIMITATIONS OF ACTION; JURISDICTION.

Notwithstanding any other provision of law, any action to contest the constitutionality or validity under law of this Act shall be barred unless the complaint is filed within sixty days following publication of the notice specified in section 5. Exclusive original jurisdiction over any such action and any proceedings under section 6(d) is hereby vested in the United States District Court of the District of Massachusetts.

SEC. 12. EFFECTIVE DATE.

The provisions of section 4 shall take effect upon the transfer of title to the settlement lands to the Wampanoag Tribal Council. The fact of such transfer, and the date thereof, shall be certified and recorded by the Secretary of the Commonwealth of Massachusetts. All other provisions of this Act shall take effect upon enactment.

○

Mr. ANDREWS. From the statement of the Department of the Interior, it appears that the most important remaining issue is completion of the acknowledgment process, to determine the legal existence of this tribe.

We have letters of support from the Governor of Massachusetts. We understand that the Senators from Massachusetts will testify, and we would like to call, as the administration witness, Hazel Elbert, Director, Office of Indian Services, Bureau of Indian Affairs, Department of the Interior.

Ms. Elbert.

It is good to have you here. Let me assure you that your statement will be included in the record as though you gave it in its entirety. You can summarize in any way you wish.

We have a problem. I was trying to out-wait the vote, and it is probably where our Senators from Massachusetts are. There is a vote going on on the floor. I am going to have to depart for a while, but I will leave your chief counsel to continue this, because I know that many of you have traveled from Massachusetts, and I do not want to hold you up.

You may proceed.

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY—INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, ACCOMPANIED BY JOHN SHAPARD, CHIEF, BRANCH OF FEDERAL ACKNOWLEDGMENT AND RESEARCH

Ms. ELBERT. Thank you, Mr. Chairman.

I have here with me at the witness table John Shapard, who is Chief of our Branch of Federal Acknowledgment and Research.

Mr. Chairman, and members of the committee, I am pleased to present the views of the Department of the Interior on S. 1452, the Gay Head Wampanoag Indian Claim Settlement Act of 1985.

I will not repeat all the information and discussion that is——

Mr. TAYLOR [presiding]. Do you want to pull the microphone a little closer to you so that we can hear a little better?

Ms. ELBERT. Is that better?

I will not repeat all the information and discussion that is included in our February 5, 1986, report to the committee on S. 1452, but I have attached a copy of the report to my statement.

As stated in that report, Mr. Chairman, we oppose enactment of S. 1452 because it does not meet the criteria for the settlement of eastern Indian land claims as set forth in the President's veto message on another eastern land claims bill during the 98th Congress.

These criteria are: Completion by this Department of its administrative procedure for determining whether Federal recognition of the tribe is appropriate; verification of the claim; and payment by the State of Massachusetts of at least one-half of the settlement costs.

S. 1452 would settle outstanding Indian land claims in the town of Gay Head, MA. The settlement would terminate a Non-Intercourse Act claim that has been pending before the U.S. District Court for the District of Massachusetts since 1974. The lawsuit involves a claim to approximately 240 acres of land presently held by the town of Gay Head as town common lands.

The claims have also resulted in the clouding of titles to certain private lands in the town of Gay Head, even though many of these lands are not involved in the lawsuit. As part of the settlement in S. 1452, an appropriation of $3 million is authorized.

To establish a prima facie case under the Non-Intercourse Act, a plaintiff must show that it is, or represents, an Indian tribe within the meaning of the act; the parcels claimed are tribal land; the United States did not consent to the alienation of the land; and the trust relationship between the tribe and the United States has never been terminated or abandoned.

Since the United States has had little or no involvement with the Gay Head Indians and has never formally acknowledged that a tribe even exists, it has never been in a position from which it could consent to an alienation of their lands or a termination of the trust relationship. Thus, the only two issues of significance in this matter are whether there is a tribal group capable of bringing a claim, and whether the lands at issue are covered by the Non-Intercourse Act.

As I indicated, there is currently no Gay Head or Wampanoag Tribe acknowledged as existing by the Federal Government. Sectgion 8 of S. 1452 specifically preserves the right of the Indian entity at Gay Head to petition for Federal recognition.

A group representing itself as the Gay Head Wampanoag Tribe did file a petition for acknowledgment pursuant to 25 C.F.R., Part 83, in 1981. We anticipate that a recommendation concerning the group's eligibility for Federal status will be available by June 1986.

We believe that processing of the recognition petition filed by the Gay Head Indians should be completed before any legislative settlement is considered.

We acknowledge that there is limited precedent in the Rhode Island Indian Claims Settlement Act for settling a claim prior to acknowledgment of a tribe. However, we believe this precedent should not be followed in this or future Non-Intercourse Act settlements because it is our view that the determination of tribal existence is a fundamental threshold issue in making such a claim.

Without tribal status, a claim is not valid. If there is no tribe, there can be no claim. Thus, if Congress were to settle this claim and the group was subsequently found not to be a tribe, Congress will have legislatively settled a claim lacking merit.

If the bill were to be amended to make implementation of the settlement contingent upon Federal acknowledgment of the Gay Head Wampanoag Tribe by the Department, our concerns about the existence of the tribe would be alleviated. However, that amendment would not address the inadequacy of the State contribution to the proposed settlement.

We believe State participation called for in S. 1452 is inadequate. Other than the agreement to allow the town to reconvey the town common lands back to the tribe, we see no contribution from the State in the settlement bill. Inasmuch as the town common lands, if transferred to the tribe, will be subject to sever land use restrictions and will, except for a nominal change in record ownership, maintain the current status of the land in most respects, we view the State's contribution as largely illusory. However, we understand that, in addition, the State legislature may appropriate $1.5 million for the settlement, which would be half of the $3 million called for in section 3(b) of the bill.

Finally, we believe that the circumstances of the alleged taking and the applicability of the Non-Intercourse Act should be examined with care to establish the validity of the claim or sharply reduce the uncertainties. The attached report summarizes the information we have on the circumstances of this unusual case. While the resolution of unresolved legal questions through a legislative settlement may properly be the subject of congressional action, the unresolved issues regarding tribal existence and the State's inadequate contribution force us to recommend against enactment of this bill.

This concludes my prepared statement. I will be happy to answer any questions you may have.

[Prepared statement of Ms. Elbert appears in the appendix.]

Mr. TAYLOR. Ms. Elbert, I do have a few questions that I would like to ask.

We would not like to pass this bill without settling the issue of recognition. I think that is a key element here.

Your statement says that the process should be completed by June 1986. Does this mean early June, or late June?

Ms. ELBERT. The date that we have for completion of our work on the petition is June 8, 1986.

Mr. TAYLOR. Is that a date that we can hold you to?

Ms. ELBERT. June 6; I am sorry.

Mr. TAYLOR. Can we hold you to that date?

Ms. ELBERT. Yes.

Mr. TAYLOR. Good. Will the recommendation that you reach on June 6 be a preliminary recommendation, or a final one?

Ms. ELBERT. It will be a recommendation to the Assistant Secretary. The recommendation becomes final when he signs off on it. It is a proposed finding, rather, that is published in the Federal Register according to our regulations, and then there is a certain period of time for everyone involved or concerned to comment on the proposed finding,

Mr. TAYLOR. What is the normal time lapse between a preliminary finding and a final recognition?

Ms. ELBERT. I would like to defer to John Shapard, who heads up the Federal Acknowledgement Office, to respond to those questions.

Mr. SHAPARD. You mean after the proposed finding, how long does it take before it becomes effective?

Mr. TAYLOR. Yes.

Mr. SHAPARD. All right. There is a 120-day comment period, or rebuttal period, depending on the finding, or on the people's attitude toward the finding. After that, there is a 60-day period in which the acknowledgment staff has to review any comments they have. If there were no comments, that could conceivably be reduced to less than a week, and has been in the past. At that time, we would publish a final determination, which is not effective until 60 days after that, to allow an opportunity for appeals to the Secretary of the Interior.

Mr. TAYLOR. That is the normal course of events.

Mr. SHAPARD. Right.

Mr. TAYLOR. And, of course, in this case we have the unusual situation of settlement legislation pending before the Congress which may lead to some different approach. If the preliminary recommendation is favorable and the timing for passage of this bill should occur before the final recognition by the BIA, would you object to an amendment to this bill that would formalize congressional recognition of the Wampanoag Tribe of Gay Head?

Mr. SHAPARD. Let me clarify the question. If the proposed finding was positive, would we object to a bill recognizing the group?

Mr. TAYLOR. Yes.

Ms. ELBERT. I do not think we would oppose that. I have asked the staff to see if we cannot speed up the process, to arrive at a recommendation for the Assistant Secretary as early as the second or third week in May.

Mr. TAYLOR. That would certainly be helpful, because our clock is running in this Congress, but, nevertheless, following the normal process, you would be caught with the regulations that would normally spell out, what was it, a 120-day period.

Ms. ELBERT. 120 days.

Mr. TAYLOR. There are startup costs that are associated with newly recognized tribal government. What source of funding is used for this purpose, if a tribe is recognized through the acknowledgement process, and can the same source of startup funding be utilized by a tribe that is recognized through legislation?

Ms. ELBERT. Yes; we use the same appropriated moneys new tribes acknowledged under our FAP process, as well as through the courts and legislation.

Mr. TAYLOR. So the mere fact that there is a legislative initiative involved here should not alter or affect the ability to utilize that newly recognized tribe fund.

Ms. ELBERT. That is correct.

Mr. TAYLOR. Among the criteria, the three criteria, that were spelled out in the earlier letter of Assistant Secretary Swimmer, and your testimony here today, we have the matter of the State Contribution.

This bill, as it was introduced, provided for an appropriation, or authorized an appropriation, of $3 million. It is our understanding at this point that the State is preparing to take the necessary legislative action to appropriate $1.5 million to go toward the settlement. That is 50 percent of the cash, in addition to the lands that will be transferred.

In light of that proposal by the State to contribute $1.5 million in cash, would this meet the criteria that you have set out for State contribution?

Ms. ELBERT. Yes, sir; that would satisfy our concerns about the third criteria.

Mr. TAYLOR. Your statement, Ms. Elbert, also indicates that you acknowledge the role of Congress in resolving certain of these legal issues and indicates that the only other issue that would remain unresolved, other than the State contribution, is the question of tribal existence.

If that existence is, in fact, acknowledged through your FAP process, would the Department of the Interior support this legislation?

Ms. ELBERT. If the tribe——

Mr. TAYLOR. In other words, the third issue there was the question of, I guess, meritoriousness of the claim, but it seems in the testimony that you are acknowledging the function of Congress to take a hand in the resolution of that issue.

Ms. ELBERT. Yes; if our process acknowledges them as a tribe, then, of course, that satisfies criteria No. 1, and if the State comes across with the $1.5 million, that takes care of No. 3. I think No. 2 depends on No. 1; if there is an existence of a tribe, that takes care of criteria No. 3.

Mr. TAYLOR. I have one other question I will ask you, and I think it may be redundant, but I am not sure.

Will the Bureau of Indian Affairs' lack of participation in the negotiation of this settlement in any way affect the BIA's position on the terms of the settlement, or will the Department insist on reopening negotiations with the goal of a new settlement, in which the administration is a participant?

Ms. ELBERT. Are you asking if we would change our criteria for settlement of claims? I though those were pretty will laid out.

Mr. TAYLOR. No; but if, in fact, the state contribution is met, the acknowledgment of the tribe is met, do you have any other problems with this legislation?

Ms. ELBERT. I am not aware of any other problems.

Mr. TAYLOR. So it would appear, upon the meeting of those three or two criteria—however we look at it—that that would remove any further the Interior Department problems.

Ms. ELBERT. Any concern on the part of the Department; yes.

Mr. TAYLOR. I don't have any other questions at this time. We may have some that we will be submitting after we have completed the hearing and heard from other witnesses. So, thank you very much for your testimony today.

I would like to call the next panel of witnesses: Gladys Widdiss, the tribal chairperson of the Gay Head Tribe, accompanied by Luther Madison, Jack Campisi, and Henry Sockbeson.

Ms. Widdiss, you can handle the panel any way you want.

Ms. WIDDISS. Thank you.

Mr. TAYLOR. And your prepared testimony will be made a part of the record as if it had been read in full, and if you can summarize, that would be helpful.

STATEMENT OF GLADYS A. WIDDISS, PRESIDENT, WAMPANOAG TRIBAL COUNCIL OF GAY HEAD, INC., ACCOMPANIED BY LUTHUR MADISON, TRIBAL MEDICINE MAN, GAY HEAD TRIBE; JACK CAMPISI, DOCTOR OF ANTHROPOLOGY; AND HENRY J. SOCKBESON, COUNSEL

Ms. WIDDISS. Good afternoon, Mr. Chairman. My name is Gladys Widdiss, president of the Wampanoag Tribal Council of Gay Head, Inc. I am a member of the Gay Head Wampanoag Tribe and a resident of the town of Gay Head.

I have prepared a complete statement which I have submitted to the committee. Mr. Chairman, I request that the statement be entered in the record. Rather than read that statement in its entirety, I would like to summarize those remarks and respond to any questions you may have.

I have come here today to voice the support of the Wampanoag Tribal Council of Gay Head, Inc., the traditional leadership of the tribe, and my own personal support for S. 1452.

Mr. Chairman, S. 1452 is the result of over 10 years of litigation and 7 years of negotiation by the Gay Head Wampanoag Tribe. When the tribe initially considered the land claim, there were three primary objectives considered as vitally important.

The first objective was control and preservation of tribal common lands. These common lands include the colorful Gay Head cliffs, the Herring Creek, and the cranberry bogs and dunes. These areas are of cultural and historical significance to the tribe. Traditionally our people held ceremonies, gathered food, and made a modest living from these lands.

Second, the tribe needed to provide a land base so that tribal members would have the opportunity to continue to live in the Gay Head community. Since the early 1960's, land values have increased dramatically, making it difficult for members of the tribe to make a living and maintain or build homes on Gay Head. This, coupled with a limited, seasonal economy forced tribal members to leave the community to live and find work.

Our people are being forced to leave Gay Head and the tribe is in danger of being destroyed by the forces of the marketplace.

Third, as a nonfederally recognized tribe, we felt that we needed to clarify our relationship with the Federal Government and to actively seek Federal recognition. The benefits and services available to federally recognized tribes would dramatically increase the chances for the Gay Head Wampanoags to maintain the Indian community and provide a measure of self-sufficiency for the tribe. This relationship, with a viable land base, would provide for ensuring that Gay Head would continue as an Indian community.

I believe that S. 1452 accomplishes these goals. The town's common lands will be turned over to the tribe. The State of Massachusetts has already passed legislation which enables the town to legally transfer these lands, once S. 1452 becomes a law.

The legislation also provides for the appropriation of sufficient money to purchase half the private settlement land. The State of Massachusetts will, we are confident, provide the other half.

The lands acquired will meet the housing and economic development needs of our community for the foreseeable future.

With respect to recognition, the committee should note that we have already petitioned the BIA for recognition. We expect a preliminary determination on our petition shortly.

We urge this committee not to report on S. 1452 until the preliminary determination is issued by the BIA. When a favorable ruling is issued, we request that S. 1452 be amended so as to provide recognition to the Wampanoag Tribe of Gay Head.

We would urge the committee to ensure passage of S. 1452 prior to the day we settle. We believe this approach would satisfy the concerns expressed in the February 5, 1986 letter of Assistant Secretary Ross Swimmer.

As to the role the newly recognized tribe will play under the settlement, we have recently learned of charges that there is no requirement that the Wampanoag Tribal Council of Gay Head, Inc., convey title to the settlement lands to the tribe after the BIA has recognized us and a new tribal governing board has been established.

I want to make it clear to this committee that it always has been, and continues to be, the intent of the Wampanoag Tribal Council of Gay Head, Inc., to serve as interim body which would hold title on behalf of the tribe until such time as our newly recognized tribe is organized. I believe that sections 6(d) and 7(b)(1) provide adequate language to accomplish this result.

I have, however, no objection to any amendment that would further clarify this intent, should your committee deem it necessary.

Although most tribal members support S. 1452, there are those within our membership who do not. They provide vocal and active opposition. I will not attempt to fully discuss our efforts to ensure that the majority of the tribe has voiced its support for the bill, as that is set forth in my written testimony.

I would, however, like to make the following point.

No. 1, many of the dissidents who challenge the right of the tribal corporation to act for the tribe were active members of its board in top offices. While they were in power, they asserted the corporation's power to speak for the tribe. It was only after they were voted out of office that they took the position that the corporation could not speak for or bind the tribe.

No. 2, we took great pains to ensure that all those eligible to be on our tribal roll, be there. Dr. Campisi will address this issue further, and I assure this committee that we were as fair as possible.

I have appended to my written testimony copies of the notices of the enrollment process that was sent out.

No. 3, Mr. Hahn's exaggerated statements of support for his position within the tribe are unsubstantiated and untrue. He has never produced the signed withdrawals that we requested, nor has he responded to the BIA, when asked for documents to the extent of his support.

No. 4, we have conducted two votes on this settlement; once in 1981 and again in 1983. Prior to both votes, our tribal members were invited to tribal meetings, where the terms of the settlement were discussed. Members of the dissident faction attended these meetings and spoke against the settlement. In the 1981 vote, the tribe voted in favor of settlement by a margin of 115 to 60. Despite intense lobbying against the settlement—not to mention their litigation efforts—the tribe again voted in favor of the settlement in 1983. The margin of acceptance actually increased at the second vote, with 164 in favor and 29 opposed.

Dissidents Frank James and Thelma Weissberg and many of the opponents of settlement that you will hear from today voted in both the 1981 and 1983 tribal votes.

We realize the limitations of the settlement. For example, there is only limited provision for tribal jurisdiction, but traditionally the Gay Head Wampanoags control the town government, and we believe that the settlement provides the opportunity for the tribe to maintain that control.

Also, there is no provision for Federal recognition. The Gay Head Wampanoags have submitted documentation to support a petition for Federal acknowledgement. We expect a preliminary determination will be issued by the BIA shortly.

It must be kept in mind that the Gay Head Wampanoag Tribe, since 1870, has consistently elected Gay Head Indian people to town government positions. At present, all three selectmen—the town clerk, the tax collector, both constables, the chief of police, and the shellfish warden—are all Gay Head Indians, and, with few exceptions, have always been Indian.

If this legislation is enacted, the tribe, with an land base and the opportunity to develop economically and socially, will continue to control its control of the leadership position in the Gay Head community.

The last thing, Mr. Chairman, we recognize and accept that this bill will not empower our tribe to conduct high-stakes gaming on the public or private settlement lands provided for in this bill.

Thank you for providing me an opportunity to address the committee in regard to this most important issue. I urge you to favorable report S. 1452 out of committee.

Thank you.

Mr. **Taylor**. Thank you very much, Ms. Widdiss.

[Prepared statement of Ms. Widdiss appears in the appendix.]

Mr. **Taylor**. Would other members of the panel like to express themselves?

Mr. Luther Madison?

STATEMENT OF LUTHER T. MADISON, TRIBAL MEDICINE MAN, GAY HEAD TRIBE

Mr. **Madison**. Good afternoon, Mr. Chairman.

My name is Luther Madison, Luther T. Madison. I am a member of Wampanoag Tribe of Gay Head and a life-long resident of Gay Head. Since the death of my father in 1972, I have served as the tribe's medicine man. My father had served as medicine man from 1923 until his death.

I have come here today to express my support for S. 1452. I have always supported this legislation and believe that this settlement will serve the tribe and the town's best needs. Hopefully, this settlement will permit the town and the tribe to work together to make Gay Head a safe and friendly community once again.

I know there are people within the tribe who oppose this settlement, but I have listened to their objections and arguments at tribal and town meetings and find them, in my mind, to be unquestionably wrong.

This settlement preserves the town common lands for the tribe, which has been a major objective from the start of the suit. It also provides that the tribe will acquire land that can be used for affordable housing. This will ensure that our people are not driven out of Gay Head by the forces of the marketplace.

As a tribe, we have considered the terms of this settlement time and time again. We have conducted open tribal meetings and discussed the settlement at numerous town meetings. I believe that any tribal member who is interested has complete knowledge of the terms of the settlement and is aware that, although not perfect, it achieves our basic tribal goals. The tribe has voted on two occasions to accept this settlement. I have no doubt that a substantial majority of the tribal members want and need this settlement.

We Indians of Gay Head have always been a tribe. We have always believed that. We have always taken care of our own and have conducted our own affairs. This bill will ensure that our way of life will not be lost. I urge this committee to act favorably on S. 1452 as soon as possible.

Mr. Chairman, I would like to thank you for providing me with this opportunity to testify here. This concludes my remarks, and I will be willing to answer any questions that you may have.

Mr. TAYLOR. Thank you very much, Mr. Madison.

I think we will hear from the panel before we ask questions.

[The prepared statement of Mr. Luther T. Madison appears in the appendix.]

MR. TAYLOR. Mr. Campisi.

STATEMENT OF JACK COMPISI, DOCTOR OF ANTHROPOLOGY

Mr. CAMPISI. Mr Chairman, thank you.

My name is Jack Campisi, and I am here today to express my views on the tribal membership as it relates to Senate bill 1452.

I have a doctorate in anthropology and have specialized in research for the American Indian communities. Since 1978, I have assisted a number of tribes in the preparation of petitions for Federal acknowledgment. In this context I have conducted research on the Gay Head Wampanoag Tribe since 1981. I have attached a copy of my curriculum vitae to my written statement.

I would like to summarize my findings as presented in my written statement to the committee.

First, it is important to make clear the distinction between the Gay Head Wampanoag Tribe and other Wampanoag groups. During the 19th century there were as many as 12 tribes or groups identified as separate Indian communities in Massachusetts. Each had its own membership, location, and leadership. The Gay Head Wampanoag Tribe was one of these.

In the course of my research I found no instance where any group exerted control or asserted authority over the Gay Head Wampanoag Tribe. It has been advanced by some that there is a sizable number of individuals of Wampanoag descent who are eligible for tribal membership.

This is an erroneous conclusion that apparently derives from a failure to distinguish between Gay Head Wampanoag descendants and all others of Wampanoag descent.

Second, some have questioned the tribe's use of the 1871 census as its base line. In my opinion, this is the best of the three available censuses for this purpose. It is the most complete, containing the names of more individuals than either of the other censuses, and it contains names not on the other censuses.

Additionally, I find the probability of its accuracy to be higher, since it was the basis for the division of land among the tribal members. I reasoned that there was likely to be a more critical look at the membership under such conditions.

In summary, it is my professional opinion that the current Gay Head Wampanoag tribal membership list is as complete as can be reasonably expected. I believe that an honest effort was made to include all those who are eligible for membership.

Thank you.

[The prepared statement of Jack Campisi appears in the appendix.]

Mr. TAYLOR. Does that conclude your testimony?

Mr. CAMPISI. Right.

Mr. TAYLOR. Could you hold on just a second?

Mr. CAMPISI. Yes.

Mr. TAYLOR. I would ask the panel to just delay this testimony a moment.

We have Senator Kennedy with us, the sponsor of the bill, and, Senator, if you care to make a statement, we would be happy to receive it.

I apologize for Senator Andrews. He had to go to the floor for the vote and has not gotten back yet.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM MASSACHUSETTS

Mr. KENNEDY. I apologize for Senator Andrews. He had to go to the floor for the vote and has not gotten back yet.

First of all, Mr. Chairman, I want to express my very sincere appreciation to the members of the committee for considering this legislation, and I know that the case is very well presented by very capable and able spokesmen and women who will be speaking in support of this particular program and legislation.

Let me just say that the legislation that we have before us is a result of an extremely long, difficult, challenging set of negotiations that have taken place over many, many years, involving the best efforts of the members of the Indian tribe, the local community, those at the State level, as well as those at the Federal level.

This is not an issue which is new, certainly to the people in the Gay Head area or to the people on Martha's Vineyard, or Massachusetts. We have been wrestling with this question for many, many years in this administration and in previous administrations.

We are very hopeful that we can gain a favorable consideration of this legislation, because it really is indispensable in the terms of justice to the Wampanoags, and it is indispensable, I think, in terms of the clarifications of various land titles in that area which have been unsettled for many, many years.

The State of Massachusetts is quite prepared to meet its responsibility. I have talked to the Governor about this. The request for the $1.5 million funding is in the Governor's budget. He is strongly committed to it. He has spoken in favor of it, and he has given us virtual assurances that in any budget that is considered it will include these funds.

As the Chair knows, this legislation is contingent upon the State action, in any event, so the security of the taxpayer, the Federal taxpayer, is quite assured.

I would have preferred, Mr. Chairman, that we would have been able to fashion legislation that would have, as a matter of definition, given the assurances to the members of the tribe—they do not need them, themselves; the others perhaps do—that the Wampanoags are a tribe.

We are sensitive to procedures which have been established to deal with these particular considerations at a national level.

We know of the apparent resistance that would come if such a language were actually included, and we have taken that into consideration and fashioned the legislation as we have at the present time, but I must say, as one who was formerly the head of the Indian Education Committee and spent time on Indian affairs a good deal more than I have in the recent times, I know that in terms of criteria, I feel personally, and I know that those who have reviewed the case for the tribe feel, that that should be forthcoming.

We were very hopeful that it would be forthcoming prior to this hearing. It is to no fault of the witnesses here, the members of the local community, that that has not been forthcoming, but we recognize, as well, that there is a contingency on the legislation that there be such a finding. We recognize it. We wish it could have been otherwise, but, once again, that was a matter that we took into consideration in fashioning the legislation.

Finally, I would just say, given the assurances, Mr. Chairman, that I know that there are those who might question this particular approach and would want more expansive consideration of the interests of the tribe. Those issues have been thoroughly reviewed with great time, great deliberation, and with very adequate chance for consideration of those other interests. I think that the decision by the tribe and tribal leaders in a series of two particular occasions indicated wide support, overwhelming support.

This is a very clear indication of the degree of support for this particular proposal by those that would be most affected by it.

So, for all those reasons, which I won't repeat for the chairman—Chairman Andrews, if you just take into consideration we have made a strong case in favor of this legislation in your absence, I would hope that we could get favorable consideration.

I will take the opportunity to privately talk with you and hopefully you will have a chance to review the record.

I wanted to express appreciation to all of the people in our State and also particularly to those that are most directly affected, Mr. Chairman, by the consideration of this legislation.

Mr. ANDREWS. Let me point out, Senator, that we appreciate your coming and extend my apologies. I was here earlier. I tried to outguess the vote on the front, and you outguessed it on the back. You know how those things go, but your statement is a strong one, a powerful one, one of commitment to the people you represent, and this committee will, of course, do everything we can to abide by your suggestion, because, after all, you know that area far better than we do.

Mr. KENNEDY. I thank the Chair, and I think you are hearing from very able spokesmen and women here, and I am very greatful to you for giving them a chance. This is a matter of great importance and significance to the quality of lives of many people there, and you are going to give them a chance to speak to the issue.

I want to thank you very much.

Mr. **Andrews**. Thank you very much, Senator. As I understand, Henry Sockbeson has not yet spoken.

Henry.

STATEMENT OF HENRY J. SOCKBESON, COUNSEL

Mr. **Sockbeson**. Thank you, Mr. Chairman.

I am a member of the Penobscot Tribe and an attorney with the Native American Rights Fund. Since 1983, I have been the attorney who has worked with the Gay Head Tribe in order to try to settle this claim.

I have submitted written testimony to the committee, which covers the litigation that has been brought by the dissident faction within the tribe in Federal and State court. I would ask that that testimony be entered in the record.

Mr. **Andrews**. It will be, at your request.

Mr. **Sockbeson**. I would like to briefly summarize the points made in that written document.

The dissident members of the tribe have been unwilling historically to accept the tribe's 1981 and 1983 vote accepting the principles of settlement.

On those two occasions, they lost the tribal vote, but have since sought to impose their will on the tribe by retaining an attorney and seeking to force a settlement through the judicial process. They first turned to the Federal court, where they attempted unsuccessfully to intervene on an individual basis in the tribe's Non-Intercourse Act claim.

The court there ruled against the attempted intervention, but rather than appeal this decision, they dropped their intervention effort and instead attempted to bring a separate supposedly independent action based on essentially the same Non-Intercourse Act claim made by the tribe in the same court where the tribe's claim was then pending.

This latter attempt resulted in the published decision, *James* v. *Watt*, which held that only tribes could maintain a cause of action under the 1795 Non-Intercourse Act. The U.S. Supreme Court refused to review this decision.

I have appended a copy of this decision to my written testimony.

The purpose of both of these Federal actions was to halt the settlement of the tribe's Non-Intercourse Act claim. Having lost in the Federal court, the dissidents then turned to the State court system. There, they filed a bewildering array of cases in both State Probate and Superior Courts.

Again, the purpose of these actions was to stop the tribal corporation from settling these claims. I will not attempt to outline the course of this State litigation. I refer you to a copy of the case entitled *James* v. *Bellotti*, where they are tracked in detail. A copy of this decision is also appended to my written testimony.

Recently, all of these State court actions have been consolidated. On October 30, 1985, a superior court judge granted a motion for summary judgment for all of these consolidated actions. The court based its ruling on the principles of res judicata, meaning essentially that a litigant bringing a Federal action must also bring any State law based theories which are grounded on the same facts.

The court held that because the dissidents failed to bring their State claims which they filed their Federal claims they were subsequently barred from bringing them in a later State court action. Of course, this ruling has been appealed.

It has been suggested that action by this committee be delayed, pending the resolution of this State action. Since the court's decision was based on the principles of res judicata and not on the merit, I suggest to the committee that no quick solution of these cases can be anticipated. Even if the State appellate court were to rule in the dissidents' favor, the case would be remanded back to the Superior Court for trial on the merits.

It will take years for the State courts to finally determine the merit of the issues that the dissidents have raised.

I can, however, assure this committee that there are currently no outstanding State court orders which would in any way restrain the ability of the Wampanoag Tribal Council of Gay Head, Inc., from settling this claim on behalf of the tribe.

I thank you for the opportunity to appear here today.

[Prepared statement of Mr. Sockbeson appears in the appendix.]

Mr. ANDREWS. I appreciate your testimony. Let me ask a few questions that I would like to have as a matter of the record.

What will be the tax status of lands that will be acquired by the tribe under this legislation?

Mr. SOCKBESON. The tax status would be that those lands would be subject to tax if they are developed. If they are not developed, they would not be subject to tax. It is not really called a tax, although that is the effect of it. They are called in-lieu-of payments to the town. Basically, the idea is that the tribe is still a part of the town and would require some town services, and the taxes that would be paid, would serve to pay the tribe's share of the cost of the town's supplying services.

Mr. ANDREWS. Incidentally, let me point out to the other members of the panel that we assume that, as your attorney, as your counsel, he is speaking, and you are agreeing with him. If you do not agree with him, speak up and say.

Mr. SOCKBESON. I can assure you, Mr. Chairman, that has never been a problem with my client.

Mr. ANDREWS. I just want to make absolutely sure, because when we go to the floor with this piece of legislation, we want to know that we have heard not just from the counsel, but from also these key leaders of the Gay Head Tribe. It makes a lot better record.

Now, what is meant by payment in lieu of taxes, and would failure to make such payment result in tax forfeiture?

Mr. SOCKBESON. No; it would not. Basically, what the town would do would be to take over the property and lease it until the payments were made, so that the tribe could never lose title to that property for taxes.

Mr. ANDREWS. Why were the public beaches not transferred to the tribe along with the cliffs and cranberry bog lands?

Ms. WIDDISS. There was a question with particularly the non-Indians at Gay Head who were afraid that if we controlled the beaches, that they would be excluded from them, and it has never been the position of Gay Head Wampanoags to exclude anyone from anything, and today, when we begin to make rules and regulations, it is only because we have to because of the numbers, and in order to keep the relationship on a good basis, we agreed that we should take like a double control of the beaches; that the town of Gay Head and the tribal council and taxpayers association would monitor the control of the beaches.

When I say it to you, it comes out as three entities. In my mind, it is two entities, because the tribe controls the town, and this is hard for some people to understand. So when I say the town, taxpayers association, and the tribe, I am really speaking of two entities, and we agreed that it would be to everyone's advantage that the beaches would be controlled by—would be under the control of both parties.

Mr. **Andrews**. What is the status of the schoolhouse at Gay Head?

Ms. **Widdiss**. The schoolhouse is now the town library.

Mr. **Andrews**. OK. What are the present hunting and fishing rights of Indians at Gay Head, and are they the same or different from the rights of others?

Ms. **Widdiss**. Right now, they are the same as anyone else.

Mr. **Andrews**. OK. Are you confident that every opportunity was given to the so-called dissident members to make their views known during the negotiation process?

Ms. **Widdiss**. Yes.

Mr. **Andrews**. To what extent was information on the terms of this settlement disseminated to tribal members before the vote on settlement?

Ms. **Widdiss**. I have attached to my written testimony copies of letters that were sent to the tribal members, with the date and what was contained in the letter.

Mr. **Andrews**. We will make that a part of the record so we have it complete, and under the agreement which settlement lands will be available to the tribe for development other than the Cook lands?

Ms. **Widdiss**. There will be what is the so-called Strock property. Those will be available to the tribe for housing development. At the time that we chose them, they were chosen more or less for two reasons. They border the old Indian cemetery. We have two cemeteries at Gay Head. The old Indian cemetery, which was in the original village, and then the new one, so the Strock property borders that, and then we have the land that borders the Herring Creek, which is called the Cook property. That will come to us as economic development property.

Mr. **Andrews**. Thank you very much. We appreciate your statement. It will be most helpful to us.

We will next from panel No. 2: Priscilla Attean and Curtis Osceola.

If you would identify yourself, your statements will be made a part of the rcord, and you can summarize them, or give them in your entirety, depending upon what you wish. We will be glad to hear from you.

STATEMENT OF PRISCILLA ATTEAN, PENOBSCOT TRIBE OF MAINE, ACCOMPANIED BY CURTIS OSCEOLA, EXECUTIVE DIRECTOR, UNITED SOUTH AND EASTERN TRIBES, INC., NASHVILLE, TN

Ms. **Attean**. Good afternoon, Mr. Chairman.

My name is Priscilla Attean, and I am here today representing Gov. Tim Love and the Penobscot Indian Nation of Maine.

On behalf of Governor Love and the Penobscot Indian Nation, I would like to thank you for this opportuntity to give testimony in support of the Gay Head settlement legislation.

The Gay Head Tribe has long been recognized by the Penobscot people. As one of the first tribes in the United States to settle its claim though a congressionally sanctioned negotiated settlement, it gives the Penobscot Nation extreme pleasure to come here today as a federally recognized tribe, with an everdeveloping reservation and what we consider to be a sound working relationship with the Federal Government and the State of Maine.

As I am sure you will recall, these things do not come easily. Our tribe was in court for over 7 years. Our settlement took over 3 years to negotiate, and Congress took another period of months to enact the settlement legislation into law.

In looking back over the course of the last few years, the Penobscot Indian Nation can honestly state that despite a few minor problems the Settlement Act has worked well for us, and we in no way regret our decision to go for a negotiated settlement of our claim.

One of the reasons our relationship with the State of Maine has developed as well as it has may well be the fact that Congress and the Federal Government, while providing unquestionably necessary assistance and support, respected the tribe's right to negotiate and arrive at a mutually acceptable solution to its claim.

It was this negotiation process and the Federal endorsement of our position that encouraged the State of Maine to respect the sovereign rights of the Penobscot Nation despite extreme political pressure to do otherwise.

Our brothers at Gay Head have also undertaken many of the same hard bargaining sessions and in and out of court arguments that the Penobscots faced only a few years ago.

We therefore strongly encourage this committee and the Congress of the United States to provide the Gay Head Tribe with the same technical assistance and Federal encouragement that they so graciously gave to our tribe when we were in their position.

It is our understanding that the Gay Head settlement has received the overwhelming endorsement of Gay Head people and is supported by the duly elected government of the Gay Head community.

The Gay Head Tribe supports this legislation. We therefore ask this committee to recognize their sovereign right to make these decisions and support them in their efforts to have their settlement enacted into law at the earliest possible time.

This is not to state that we do not wish to see this committee and other representatives of the Federal Government work to improve the Gay Head position in the settlement, itself, should such effort prove to be necessary. We, instead, suggest that any such efforts should be undertaken jointly by this committee and the Gay Head Tribe if the tribe's sovereign right to make such an important decision is to be respected.

We feel it is also relevant to point out that as is the case at Gay Head, the Penobscot Tribe had within its membership a group of individuals who were opposed to a negotiated settlement of our claim. As is the case at Gay Head, this group was a small minority, and while we made every effort to address their specific concerns, we felt, and continue to feel, that the wishes of the overwhelming majority of tribal members must be adhered to. It is the democratic process clear and simple.

The Penobscot Nation urges this committee's support of any settlement that can be negotiated with the Gay Head Tribe.

Again, on behalf of the Penobscot Nation, I thank you for this opportunity to testify here today.

I will be glad to answer any questions.

Mr. ANDREWS. Thank you very much for a very complete statement.

[Prepared statement of Ms. Attean appears in the appendix.]

Mr. ANDREWS. We will now hear from Curtis Osceola, who is the executive director of the United South and Eastern Tribes, Inc.

Mr. OSCEOLA. Thank you, Mr. Chairman.

Again, my name is Curtis Osceola. I am executive director of the United South and Eastern Tribes, and I am here today to express the support of the member tribes of USET, and USET is an intertribal organization composed of 16 federally recognized American Indian tribes located in the Eastern United States.

USET is headquartered in Nashville, TN, founded in 1968, and dedicated to promoting the economic and social welfare of its member tribes.

On March 12, the member tribes voted to support the efforts of the Wampanoag Tribal Council of Gay Head by resolution, the efforts being the passage of legislation to implement the settlement of the Federal litigation entitled "Gay Head Tribe of Indians versus Town of Gay Head."

The member tribes support the legislation in principle. We understand that the reporting of the legislation will be somewhat modified or changed as the process goes along, and we hope that it would be in the best interests of the people of the Gay Head Tribe.

That is our statement. Thank you.

[Prepared statement appears in the appendix.]

Mr. TAYLOR [presiding]. Thank you very much, Mr. Osceola.

We do not have any questions of this panel of witnesses. We appreciate very much your testimony, and I am pleased to hear the testimony with regard to how it is working in Maine. As you know, this committee was deeply involved in that Maine settlement act. It is always nice to hear followthrough.

Thank you very much.

The next panel of witnesses is Hannah Malkin, president, Gay Head Taxpayers Association, accompanied by Jim Quarles, counsel for the association.

STATEMENT OF JAMES L. QUARLES III, COUNSEL FOR GAY HEAD TAXPAYERS ASSOCIATION, ACCOMPANIED BY HANNAH L. MALKIN, PRESIDENT, GAY HEAD TAXPAYERS ASSOCIATION

Mr. **Quarles**. Good afternoon, Mr. Taylor.

My name is James Quarles, and seated on my right is Mrs. Hannah Malkin. Mrs. Malkin is the president of the Gay Head Taxpayers Association. I and my law firm have the privilege of representing the Gay Head Taxpayers Association.

Mrs. Malkin and I have previously submitted written statements expressing our support of this bill. In view of the limited time available we do not propose to burden the committee with extended statements. However, Mrs. Malkin has some brief remarks to make on behalf of the Taxpayers Association.

Thank you.

[Prepared statement of Mr. Quarles appears in the appendix.]

STATEMENT OF HANNAH L. MALKIN, PRESIDENT, GAY HEAD TAXPAYERS ASSOCIATION

Mrs. **Malkin**. Mr. Chairman, members of the committee, I am Hannah Malkin, a landowner in the town of Gay Head, MA, and the president of the Gay Head Taxpayers Association. It is an honor to appear before you today to testify on S. 1452, a bill which means so much to the people of Gay Head.

Our organization, the Gay Head Taxpayers Association, was formed in 1973. Our membership, of approximately 140 families, includes approximately 75 percent of Gay Head's seasonal and year round residents who are not affiliated with the Wampanoag Tribal Council of Gay Head, or other who assert an ancient claim to the ownership of Gay Head.

In 1976, our organization voluntarily joined the litigation commenced by the tribal council as a defendant. That lawsuit, if successful, would threaten the title of all Gay Head landowners. From the very beginning, our goals had been to protect our homes and land and to return Gay Head to the harmonious atmosphere which attracted us to it in the first place.

All of us also believe that there is an inherent and obvious inequity in compelling innocent landowners to defend their titles against a land claim based on acts occurring more than a hundred years ago.

In 1977, Albert Sacks, then dean of the Harvard Law School, became a mediator and attempted to resolve the disputes between the residents of Gay Head who were aligned with the tribal council and those who were aligned with our organization. That effort of mediation continued for more than 2 years, but was ultimately not successful. Negotiations, however, continued. In 1981, we began another concerted effort to attempt to settle the dispute. For more than 2 years, Lawrence Mirel, on our behalf, and Thomas Tureen, of the Native American Rights Fund, negotiated in an attempt to achieve a mutually acceptable solution to the competing interests.

In late 1983, we were successful in reaching the understanding contained in the joint memorandum of understanding concerning settlement of the Gay Head, MA, Indian land claims. The bill which is before the committee today is a result of that agreement.

Our membership urges the passage of this bill for three basic reasons.

First, the litigation of an Indian land claim is an extremely complex and extraordinarily expensive undertaking. Our membership of only 140 families has raised and spent almost $175,000 in an effort to defend our properties and to seek the passage of the legislation necessary to resolve this dispute; this, despite the fact that no one suggested any member of our organization is in any way responsible for any of the wrongs the tribal council claims were worked upon it.

We are, of course, committed to continue to defend our homes and property, but believe that the continuation of the litigation is a burden we should not be forced to bear.

Second, in addition to the money we have spent, the pendency of this lawsuit has been a severe hardship to us. Title insurance companies are reluctant to insure the titles of Gay Head properties. Banks have been reluctant to provide mortgages, thus making land transactions difficult if not impossible.

Third, this legislation is a fair resolution of the dispute. It produces a result which is desired by the plaintiffs. From our standpoint, not only does the bill remove the cloud upon our titles, but it respects the expectations we had when our members came to Gay Head.

Our members bought their lands and homes on the understanding that they were moving into a community where the rules and regulations were the same as in other towns in Massachusetts. It was for that reason that we conditioned our acceptance of the settlement upon a requirement that all of the laws, ordinances and regulations of the Commonwealth of Massachusetts apply to all of the lands in our town.

Section 10 assures that none of the lands in our town will be exempt from generally applicable State regulation against gambling or other presently prohibited activities which would ruin our town.

While this bill does not provide any party with all they might want, it does provide all parties with that which they need most. For the tribal council, the bill provides an inalienable land base and a new opportunity to pursue their Indian ancestry. For the town, the bill preserves the invaluable common lands from development, continues its ownership of the beaches, preserves its tax base, and confirms its jurisdictional authority.

For the State, the bill likewise confirms that Gay Head and its residents are subject to the same laws and regulations as any other citizens of the Commonwealth of Massachusetts. For the property owners, the bill removes the cloud on their titles, removes a heavy financial burden.

Mr. Chairman, and members of the committee, on behalf of the Gay Head Taxpayers Association I ask that you report favorably on this bill. Only the enactment of a bill such as this can end the expense, uncertainty and division which has been visited upon our town.

We understand the Commonwealth is planning to contribute one-half to the cost of this settlement, and now only the Congress can effectuate the settlement which both we and the tribal council have reached and desire.

Thank you for permitting me this opportunity to convey the settlement of our members.

[Prepared statement of Mrs. Malkin appears in the appendix.]

Mr. TAYLOR. Thank you, Mrs. Malkin.

In the past, there has been some technical hitch between the Gay Head Taxpayers Association and the tribe, itself, on this petition for recognition and how the legislation should be structured. I think we have received some pretty positive testimony today from the Department of the Interior and definitely the word from the State of Massachusetts was quite favorable.

In light of that, does the Gay Head Taxpayers Association any longer have any concerns about the legislation being amended in such a way that it is extending formal acknowledgment to the tribe at the same time that it is bringing about the resolution of the claim?

Mrs. MALKIN. Well, I think that our organization would have no objection if settlement and recognition were simultaneous, because we view the settlement as a resolution of this whole question. Maybe Mr. Quarles would like to expand on that.

Mr. QUARLES. Mrs. Malkin has accurately expressed our view. In response to your question, we have been in the position of both litigating these kinds of claims and in settling them. We have litigated on behalf of some of our clients and represented the State of Maine along with the Attorney General in the settlement of another.

It is our position that the settlement of these claims by legislation such as this is the appropriate way to proceed. Our view is that recognition in the context of the legislation is not inappropriate unless its insertion in the legislation causes the legislation to be less palatable to the people in the administration who will be required to pass upon it.

Mr. TAYLOR. Thank you very much, Mr. Quarles.

Senator Murkowski, do you have questions?

Mr. MURKOWSKI [presiding]. I have a question that I am interested in, because it has ramifications beyond this particular subject matter at this hearing.

I understand that there is about 491 acres involved in the settlement, and the contribution by the Federal Government and the State would be $1.5 million each. For land that generates revenues that would come as a consequence of any productivity on the 491 acres, would there be an applicable tax levied on land that generated revenues?

Mr. QUARLES. My understanding is that the so-called Strock lands which are subject to development, and which are in fact developed, would produce an in-lieu-of-taxes obligation to be paid to the Commonwealth of Massachusetts and to the town.

Mr. MURKOWSKI. So the Commonwealth of Massachusetts would pay the taxes?

Mr. QUARLES. Sir?

Mr. MURKOWSKI. Waive the taxes? You say taxes in-lieu-of, and I——

Mr. QUARLES. It would be payments in lieu of taxes.

Mr. **Murkowski**. So the State would, instead of the State collecting taxes——

Mr. **Quarles**. They would collect a payment which would be computed in an equivalent manner, but would be considered payments in lieu of taxes, the principal distinction being the activity which would be available to compel payment in the event that payment was not made. Mr. Sockbeson, on behalf of the tribal council, explained that it is comtemplated that in a situation in which in lieu-of-taxes the payments were not made, instead of a foreclosure sale, either the assets of the Tribal Land Corporation would have a lien placed on them or the land would be leased by the town for such period as was necessary to recover the in-lieu-of-taxes payments.

Mr. **Murkowski**. Well, let's put it in another way. Let's assume that there is a facility built on the land to generate revenues and the facility operates and makes a profit. Are there taxes levied on that application of the facility and the land and the reality that it is producing a revenue?

Mr. **Quarles**. All of the land and the activities on it will be subject to the jurisdiction of the Commonwealth of Massachusetts, so that our understanding would be that to the extent that any entity operated to make a profit on there, that they would be subject to the same taxes as any other resident of the Commonwealth of Massachusetts. And furthermore, the so-called Cook lands remain subject to taxation and foreclosure in the same manner as privately held lands.

Mr. **Murkowski**. So they would pay taxes applicable to whatever any other resident of the Commonwealth of Massachusetts would pay.

Mr. **Quarles**. It is my understanding they will.

Mr. **Murkowski**. I would assume, if that is the case, why then that satisfies my concern on that particular question.

On nonrevenue-producing lands, would there be a tax requirement?

Mr. **Quarles**. My understanding is that there would not, except for the so-called Cook lands.

Mr. **Murkowski**. I believe that we have the junior Senator from the State of Massachusetts, Senator John Kerry.

Senator Kerry, I believe that you may have a statement. You certainly are welcome before the committee, and as one of the members of the Select Committee on Indian Affairs in lieu of our Chairman, Mark Andrews, who is temporarily at another committee meeting, which is where I am going to be going in a few minutes, we welcome you. We look forward to your testimony and your position with regard to this matter before us.

We have had the senior Senator, Senator Kennedy, previous. We welcome you and look forward to your statement.

STATEMENT OF HON. JOHN F. KERRY, A U.S. SENATOR FROM MASSACHUSETTS

Mr. **Kerry**. Thank you very, very much, Senator, and I appreciate the committee's indulgence. I will be very, very brief because I am arriving out of turn, and I know that there is important testimony yet to be heard.

I simply would like to thank the committee for holding today's hearings on S. 1452, and I want to welcome the citizens of the Commonwealth who have traveled to Washington to be with us today to testify on this important piece of legislation.

I joined with Senator Kennedy as a cosponsor of this bill, because we both believe that it represents the realization of the important settlement which brought together the Wampanoag Tribal Council, the Gay Head Taxpayers Association, and the Commonwealth.

This dispute has been long and it has been costly. Like any dispute, it has been contentious, but the settlement, more importantly, we believe it really does represent a very welcome and permanent resolution to this complicated emotional land claim issue.

It also represents a very important opportunity to move beyond a decade of deadlock into a position which will provide us with a stable future for Gay Head.

You, obviously, are aware of the details, and I am not going to go through them at this time. But I would simply like to note that Massachusetts and our Governor, by submitting a supplemental budget request for $1.5 million as the Commonwealth's share of $3 million, we believe are trying very hard to show our good faith in this effort, and I hope that this contribution will enhance the settlement and put us in a position of being able to enjoy Gay Head and its cliffs and give to the Wampanoag Tribal Council an opportunity that is long overdue.

So, I simply want to commend the committee for its consideration of this bill and urge it to adopt it. I also want to thank those who have taken part in this process.

Mr. TAYLOR [presiding]. Thank you very much, Senator. I might just say that we have received, I thought, some very fairly positive testimony from the Department of Interior today, and we were assured that they would complete at least their preliminary work on the petition for recognition by June 6.

Mr. KERRY. Thank you very much, and I know you played an important part of that.

Thank you very much.

Mr. TAYLOR. We have another question for you.

Ms. BOYLAN. I just need some clarification.

My understanding, from reading the bill, is that there will not be any State taxation on tribal lands; that it is strictly local taxes. Is that correct?

Mr. QUARLES. I understood the Senator's question to be directed to revenues generated from activities which were conducted upon the land, as opposed to the taxation of the land.

Ms. BOYLAN. Yes; but generally if activities are on trust lands, then that income is not taxable at the State level either, if it is generated off of Indian tribal land. The way I read the bill, there is no provision for State taxation. Maybe I am wrong, but if you cannot clarify it, I will ask Mr. Sockbeson.

Mr. QUARLES. Perhaps Mr. Sockbeson is an appropriate person. However, section 10 of S. 1452 provides that, unless expressly otherwise provided, the settlement lands and any other lands hereafter acquired are subject to the laws of the Commonwealth of Massachusetts and the town of Gay Head.

Mr. **Taylor**. Perhaps Mr. Sockbeson could come back to the table for 1 minute.

Mr. **Sockbeson**. Well, that is a very good question.

The actual settlement agreement, itself, is the document that would, in large part, cover the question of taxation. If you read the settlement agreement, it talks pretty much, I think, in terms of the land itself, and the town taxes that would be applied to the land, and I think that was the concern of the parties when they sat down to negotiate it. I do not see any evidence in here that anyone considered the question of income derived from the Strock property and what State taxes would apply there.

The only area where that would be covered is in the bill itself, when it talks about the civil and regulatory control or jurisdiction over the lands, and I think you could argue both ways. I do not think it is clear at all from the bill, frankly, precisely which State taxes are applicable.

Ms. **Boylan**. The States normally do not tax land, anyway.

Mr. **Sockbeson**. The States would not tax land, but they may apply other taxes. I am not really familiar with the Massachusetts scheme.

Ms. **Boylan**. They would tax a business.

Mr. **Sockebson**. They would certainly perhaps tax some businesses.

Ms. **Boylan**. The bill says there will be no State taxation. There would not be in any case, so I took it to mean no taxation on any development either.

Thank you.

Mr. **Taylor**. Perhaps this an area we need to get clarified, because, as I read the bill and the settlement agreement, it appeared that the land was never subject to taxation but improvements put upon those lands that are eligible to have improvements put upon them. Those improvements would be subject to a payment in lieu of tax.

Ms. **Boylan**. To the town.

Mr. **Sockebson**. To the town. Well, I mean, that's correct, but——

Mr. **Taylor**. Through the taxing entity.

Mr. **Sockbeson**. It is also specified in the settlement agreement that when development is placed on a parcel of land, that not only the improvement but also if there were a requirement for 2-acre zoning, for example, that the value of those 2 acres would be included in whatever in-lieu-of-taxes would be applied. I do not think that it is totally clear from the legislation itself, precisely what other taxes with respect to the State might be applicable. And I was not a party to the negotiation process, so I really have no idea what was in the minds of the various parties.

Ms. **Boylan**. Thank you, Henry.

Mrs. **Malkin**. I believe that the property known as the Cook property was treated a little differently from the rest of the property. I think that the in-lieu-of-taxes pertains only to the Strock property for development on the Strock property and that both the agreement and the bill specifically provide that development on the Cook property would be treated as any other land. I believe I am correct on that, am I not?

Mr. **Sockbeson**. My recollection is that all activity on the Cook properties is taxable.

Mrs. **Malkin**. That land was specifically set aside for fish-related industry, and the understanding was that that would be taxable as any other business or industry on any other land.

Mr. **Taylor**. You say this was for fish-related activities?

Mrs. **Malkin**. Fish-related. The intent of the agreement was to permit development of fish or seashore-related activities there, as opposed to the Strock land, which was expected to be residential.

Mr. **Sockbeson**. I understand that to be the case, but it is not specified in the agreement.

Ms. **Boylan**. Thank you for clarifying it.

Mr. **Taylor**. We do not have any further questions at this time, but there may be some followup inquiries.

Thank you all very much.

Next, we will have panel No. 4: Jeff Madison, Chairman of the Board of Selectmen, town of Gay Head, MA, accompanied by Mark Widdiss, Selectman, and David Vanderhoop, Selectman.

STATEMENT OF JEFFERY L. MADISON, SELECTMAN, BOARD OF SELECTMEN, TOWN OF GAY HEAD, MA, ACCOMPANIED BY MARC WIDDISS, CHAIRMAN, GAY HEAD BOARD OF SELECTMEN; DAVID VANDERHOOP, SELECTMAN, GAY HEAD BOARD OF SELECTMEN

Mr. **Madison**. My name is Jeff Madison. I am a member of the Wampanoag Tribe, and while I am not the chairman of the Board of Selectmen—Marc Widdis is—I will speak first, if that is OK with you.

I want to thank you for the opportunity to speak here today on this legislation which means so much to our small community.

Mr. **Taylor**. Is Mr. Widdiss here? You are Mr. Madison?

Mr. **Madison**. I am Mr. Madison.

Mr. **Taylor**. Who is the chairman of the Board of Selectmen?

Mr. **Madison**. Mr. Widdiss.

Mr. **Taylor**. And you are Marc Widdiss, right? OK.

Mr. **Widdiss**. It is all right for Mr. Madison to speak first, as far as I am concerned.

Mr. **Taylor**. OK.

Mr. **Madison**. Thank you for having us here today, and this legislation does mean a lot to our small community in Gay Head. It is pretty awesome for us to come here and address you folks here, and if I ramble a little bit, forgive me.

I have submitted some testimony, and I would like that included in the record, but I would like to say a few personal comments, if I might, regarding this legislation.

As you listen to the testimony that is given here today, non-Indian, Indian, and inter-Indian, I think that it has a common theme, and that is that all we want is the opportunity to have a weight that has been put upon us these last 12 years or 112 years, depending upon how you look at it, relieved from our shoulders.

All we want is to have that relief and to let us enjoy the beauty and live in harmony in this small community.

As you get down through the list of witnesses, I am sure you will hear some comments in opposition to this legislation. The only thing that I can say about that is that the people in opposition to this actually started the action and initiated the court action in the first place. Their motives for opposition are only known to them.

I also want to take the opportunity to say that this is a fair compromise, accepted by a tremendous majority of all of those people who are involved.

As a public official in the town of Gay Head, I represent all of the people, and I am in an awkward position, because there should be no doubt that I strongly lean in favor of the Wampanoag Tribal Council. But I have refrained through the course of this litigation from becoming an active participant in the Wampanoag Tribal Council.

And with that in mind, I would like to use the rest of my time here today, giving a different position from those you will hear today. You hear from the Indian people, you hear from the non-Indian people, but there is another group of people that are affected deeply by this problem that we have, and that is the people who are non-Indian who are not in the Taxpayers Association, and this affects them as righteously as it affects all of us. And while they may be nonpolitical in the sense that they do not belong to the Taxpayers Association, they are not represented here today, but they should be heard.

I would like to have entered into the record an application for abatement of real estate tax by a non-Indian person from Gay Head, and just read from his statement as to why he feels he should be entitled to an abatement on his property tax in Gay Head. It is very short.

Mr. TAYLOR. We will be very happy to make that a part of the record at the conclusion of your remarks, and please feel free to read what you want to read.

Mr. MADISON. Thank you.

> In the early 1970's we listed this property, subject for his property, for sale. We could not sell due to the initiation of the local dispute which resulted in the refusal by financial institutions to consider the financing of properties in the Town of Gay Head.
>
> This dispute went on and on for years to our detriment. In 1985, we were close to a sale to a bonafide buyer who was ready, willing and able to purchase the property. We were refused a permit for a standard minimum septic system for one house on these 22 acres of property.
>
> The presentation was based on a reasonable request for variance made necessary due to the continual change of setback requirements to where they are double those required by the State over the 12-year period of the ongoing dispute referred to. In all these years we have contributed to the town. The town has never contributed to us. We help pay for the services utilized by the people who are allowed to live in the town and to build on their property. Our property, presently assessed for $145,000, continues to be taxed even though we and our sons are put in the position of being unable to use any of the services for which we pay.
>
> This discrimination has resulted in an unfair and inequitable situation.

It is a serious problem. You are the only people who can help us out. Please give us that help.

I will conclude my comments with that. Thank you.

Mr. TAYLOR. Thank you. Is the other gentlemen here?

[Prepared statement of Mr. Madison appears in the appendix.]

STATEMENT OF MARC WIDDISS, CHAIRMAN, GAY HEAD BOARD OF SELECTMEN

Mr. WIDDISS. Yes; Thank you.

My name is Marc Widdiss. I am the chairman of the Board of Selectmen in Gay Head, and also I am a member of the Wampanoag Tribe. I want to thank you all for having us here toady. It is the very significant part of this whole process.

I have submitted a statement that I request be made part of the record. I just want to add a few thoughts, a few personal thoughts, to the testimony.

As far back as I can remember, the town of Gay Head has had a special significance to me. As a child, I would be packed off in a car with my two brothers and sister who would be brought to the island where we could enjoy the clean air, the clean beaches in its natural beauty.

As I grew older, I realized that there was something more significant to that bond. I knew there was deeper feeling that was involved, and it certainly guided me at times.

Finally, 10 years ago, I made part of the most significant decision in my life. I decided to move to Gay Head. Ten years later, I am still very comfortable with that move. I am into my second term as a selectman in town, and I can see myself contributing for a number of years to the town, both as a selectman and as a member of the Indian community.

The favorable passage of this legislation, I believe, will perhaps open up the opportunities for a number of other Gay Head Indians that are not living on the island, to perhaps fulfill their dreams of coming back and living with the community that they belong to.

If there are any questions, I would be happy to answer them.

Thank you very much.

Mr. TAYLOR. We may have some when we conclude the remarks. Mr. Vanderhoop.

STATEMENT OF DAVID VANDERHOOP, SELECTMAN, GAY HEAD BOARD OF SELECTMEN

Mr. VANDERHOOP. Mr. Chairman, and members of the committee, thank you for giving me this time to voice my testimony.

I am David Vanderhoop, selectman representative in the town of Gay Head. I am a member of the Wampanoag Tribal Council of Gay Head and a lifelong resident of Gay Head. I would like to take this time to summarize for you the reasons why I support and wish you to take favorable action on Senate bill 1452, the Wampanoag settlement.

The Gay Head Wampanoag Tribe has endured through the centuries to the present and has been the vital element in the continuing community. When vacation cottages and second homes have been left for primary residences out of town, it has been the Indian resident who remains, keeping the institution alive and the town functioning.

We realize that we cannot change the hands of time, and with this negotiated settlement we are not trying to do so. All we are asking is the chance for us, including our children, as a Wampanoag Tribe, to be granted the right to remain in Gay Head, where our people's heritage lies and will forever.

That is why I, David Vanderhoop, Wampanoag, and selectman representing the town of Gay Head, have come today to voice my support of Senate bill 1452, to ensure the tenure of the fragile culture of the Wampanoag people.

Thank you for giving me this opportunity to voice my support.

[Prepared statement of Mr. Vanderhoop appears in the appendix.]

Mr. **Taylor**. You gentlemen are all selectmen of the town of Gay Head, and that is the posture or position from which you have testified. You are also members of the tribe. Are you on the tribal council by any chance?

Mr. **Widdiss**. Yes, sir.

Ms. **Boylan**. All three?

Mr. **Vanderhoop**. I have been, but as of a couple of months ago, my term on the board of directors was ended.

Mr. **Taylor**. How many members are there of the Gay Head Tribe?

Mr. **Madison**. I think those comments would be better coming from Ms. Widdiss.

Mr. **Taylor**. I felt that maybe we had passed by a panelist here that I should be directing the questions to.

Well, let me ask another question, then.

What is the current use of the Cook property?

Mr. **Madison**. It lays fallow. The town owns it. We leased it on a yearly basis to a local person who wants to engage in the marketing of herring.

Mr. **Taylor**. So the concept is a commercial activity as opposed to, let's say, a resort activity?

Mr. **Madison**. Actually, members of the Taxpayers Association and summer visitors from both Chilmark and Gay Head use that property as a mooring spot for their sailboats.

Mr. **Taylor**. But it would be property that would be fruitful to go into a fish business. That was the reference that was used.

Mr. **Madison**. At the time of the negotiated settlement, there was a thought that the tribe might enter into a fish hatchery or shellfish hatchery operation, and since that has happened, I think they have not, you know, they have stepped aside of that position.

Ms. **Boylan**. So what are you envisioning now, a marina?

Mr. **Madison**. As members of the town, you know, I think we are the wrong people to ask that. With all respect, I think you asked the tribe questions that should have been asked of us, and you are asking us questions that should properly be answered by the tribe.

Ms. **Boylan**. I have one other question. This has to do with the herring creek. As I understand it, Herring Creek is also part of the common lands that are being transferred on which no development can occur.

Does that mean you could not dredge the creek or anything; the tribe could not do anything with the creek, to make access between the two ponds, for example, easier? Even though the Cook land is right next to it, as I understand it?

Mr. **Madison**. That's right.

Mr. WIDDISS. I am not sure we would encourage disturbing the natural environment that is there. I think that for years it has supported that industry without significant alterations. I don't think it would be a good idea——

Ms. BOYLAN. So there is no reason to do anything with the creek?

Mr. WIDDISS. I do not foresee any.

Ms. BOYLAN. It is not navigable?

Mr. WIDDISS. No; just if you had hip boots, you could navigate it, but no craft.

Ms. BOYLAN. Thank you.

Mr. MAHSETKY. I have one question, and that is, to be a member of the selectmen, what is the relation between a selectman and the council? Is there any relationship?

Mr. WIDDISS. There is no official relationship. Later on, as far as, well, you know, I say, as a selectman, as a member of the tribal council, it is not necessary that—gosh, how can I put it.

Mr. Vanderhoop. We are just like any other town. There are elected officials in the town.

Mr. MAHSETKY. You are elected by the entire community?

Mr. VANDERHOOP. We are elected by the entire community.

Mr. MAHSETKY. Not by just members of the tribe?

Mr. VANDERHOOP. No.

Mr. MAHSETKY. But your tribal council is only elected by members of the tribe, right?

Mr. VANDERHOOP. That is right.

Mr. MAHSETKY. If this legislation goes forwfard, and you are officially recognized, do you anticipate any change in the relationship between the selectmen and the council?

Mr. WIDDISS. I cannot foresee anything significant. I don't know what would precipitate anything.

Mr. TAYLOR. I don't think we have any more questions. I am going to follow your advice.

Mr. Widdiss, I think there are a couple of other questions we would like to ask. We have been a little disjointed in this hearing, and I wonder if you and Henry Sockbeson could come back to the table for just a moment.

Thank you very much.

I did have a couple of questions that I think we did not get an opportunity to get to. First of all, Ms. Widdiss, could you tell us what the membership of the Gay Head, MA tribe is? I am sure that is spelled out in your petition for recognition.

Mr. WIDDISS. In June 1985, I did an update, and I believe the result was 535.

Mr. TAYLOR. Does that include both adults and children?

Mr. WIDDISS. Yes.

Mr. TAYLOR. Approximately how many voting members would there be?

Mr. WIDDISS. About 350.

Mr. TAYLOR. You indicated in your first statement that the legal action had been initiated by the Gay Head Wampanoag Tribe, Inc., the structure that I think you are currently operating under. And that ultimately there was a change in the membership of the corporation, of the leadership.

When did the change occur?

Mr. WIDDISS. In '76.

Mr. TAYLOR. 1976?

Mr. WIDDISS. Yes.

Mr. TAYLOR. I cannot recall precisely why I wantd that on the record, but there was a reason, and eventually it may come back to my mind.

Mr. WIDDISS. Most of those questions will be answered in my written testimony, because I have records of meetings, lists of how we went about finding the members, and meetings that we had prior to the votes, and things like that. That is fully included in my written testimony.

Mr. TAYLOR. We just have not had a chance to review all that, but another question: could you tell me what the criteria for membership is in the Gay Head Tribe?

Mr. WIDDISS. Yes; we use an 1871 census that Dr. Campisi spoke of, and he gave you the reasons why we settled on that particular one—because there are several.

Mr. TAYLOR. And is there a blood quantum requirement for membership in the tribe?

Mr. WIDDISS. No.

Mr. TAYLOR. Simply straight descendancy——

Mr. WIDDISS. Yes.

Mr. TAYLOR. From the 1870 census.

Mr. WIDDISS. Yes; a direct link back from a person on that census.

Mr. TAYLOR. Now, let me just follow this. If that membership criteria is followed over the next 50 years, the blood quantum ultimately could get pretty thin in that tribe.

Mr. WIDDISS. It could, but there is no guarantee that it will. If this legislation goes through, and we can accomplish what we envision, we may be building it up again, instead of it getting less. This is one of the basic reasons that we started the suit, because in our minds Gay Head Wampanoags have always been a tribe; they have always taken care of their own; and they have always known that they own those lands. It is only in the last few years that we have gotten any opposition to it, and we did not know how to go about having it clarified until the suit was filed, or prior to that, when we had gotten some information.

That basically was the main reason that we filed the suit. It was the reason that we incorporated the tribe, not because we felt that we needed to be incorporated, but in order to do what we are doing now, we had to.

Mr. TAYLOR. I understand that. I don't have a question with the corporate structure.

Ms. BOYLAN. Subsequent to the 1976 election in which the original founders, or some of them, were not reelected, were any of their names removed from the tribal list that you are talking about? Does it include those people?

Mr. WIDDISS. Yes; it still includes everyone. We have taken no one off the list.

Ms. BOYLAN. You have taken no one off?

Mr. WIDDISS. No.

Ms. BOYLAN. Thank you.

Mr. **Taylor**. Did that turnover in 1976 result in a change of the criteria for membership in the tribe?

Mr. **Widdiss**. No; the only change was the governing body and the people in control, more or less.

Mr. **Taylor**. So, prior to 1976, the membership criteria also was premised on the 1870 census.

Mr. **Widdiss**. Oh, yes. None of that has been changed; no.

Mr. **Mahsetky**. Of the 535 members, approximately how many live in Gay Head or the surrounding areas?

Ms. **Widdiss**. Roughly—you see, Martha's Vineyard is comprised of six towns. Gay Head is the smallest, and we have members who are down-island, as we say, of some of the other towns—but roughly 250 of our members are on the island. In Gay Head, we have probably, what, 100 to 125, but, there again I cannot give you definite numbers, because I can, like in permanently, but during the summertime we have more of our members come home for vacations, some to stay the summer, and the same with the down-island community

Mr. **Mahsetky**. I understand that you have a health program.

Ms. **Widdiss**. We did a health survey so that when we are recognized,we will be able to start the service.

Mr. **Mahsetky**. What is the source of funds for the health survey? It is a total survey, not a delivery of services?

Ms. **Widdiss**. No; it is not a delivery ; it was just a survey.

Mr. **Mahsetky**. And what are the sources of those funds, the survey funds?

Ms. **Widdiss**. The funds came from the ANA.

Mr. **Mahsetky**. The Administration for Native Americans?

Ms. **Widdiss**. Yes.

Mr. **Mahsetky**. You are not receiving any money from the Indian Health Service at this point?

Ms. **Widdiss**. No.

Mr. **Mahsetky**. Thank you.

Ms. **Taylor**. Ms. Widdiss, I have one other line of questioning that I would like to pursue, because I know that it is going to come up later, and that is the feeling that this statement is not providing the tribe with an adequate base for economic development. We have the common lands that are to be retained in their current status. I assume that includes the cranberry bogs. The Strock estate, I don't know what economic activity that might generate, but a part of the premise for acquiring property here is to provide adequate land for affordable housing for members of the tribe, and then we have the Cook property.

What are the economic development possibilities of the lands that are being acquired here, other than the common lands, which are——

Ms. **Widdiss**. Well, the common lands we have no intention of doing any development on.

We filed the land suit because we were afraid that someone would be getting control of them, and they would be developed; so, they are out.

The Strock property, in our minds, principally it was for low-income housing because of the location.

The Cook property, because it borders the Herring Creek, we did do a survey, and we has a program started with a fish hatchery which did not pan out because the numbers did not come out right.

Mr. TAYLOR. The cost benefit ratio?

Ms. WIDDISS. Because we are a fishing tribe, that whatever development we had on the property, the Cook property, would be related in some way to fishing.

Mr. TAYLOR. I don't think we have any more questions. I appreciate your testimony very much.

I would like to call the fifth panel of witnesses: Frank James, Thelma Weissberg, Helen Manning, Joan Pantadel. I don't know how in the world we are going to get all of these people to the table.

Mr. Hahn, are you the spokesman basically for this panel, and then other people could follow with statements?

Mr. HAHN. Yes.

Mr. TAYLOR. OK. Why don't I just let you coordinate your own panel here, and we will start with you.

Mr. HAHN. I was going to suggest panels of three, if that is agreeable.

Mr. TAYLOR. That sounds fine.

STATEMENT OF ROBERT C. HAHN, COUNSEL, JAMES GROUP, GAY HEAD TRIBE

Mr. HAHN. Mr. Chairman, as you know, my name is Attorney Robert Hahn. I represent the James Group, and I would like to point out, if I may, that although I am a lawyer, I also am a former Republican State Chairman of the Commonwealth of Massachusetts having spent 20 years of my adult life in active politics. So, when I address the subject before us today, I do it not only with appreciation of the legal principles involved but also the politics of the situation.

And I would like to say this: That we are very conscious of the pressures that lie behind this situation that is before us today. Now, in the early 1970's Senator Kennedy filed a bill which was to do with a Nantucket Island trust situation that he was pushing. And that was, in those days, in 1973, Senate 1929, and in connection with his remarks in offering that bill, which was later approved by Senator Henry Jackson's committee which recommended that it ought to pass.

The Senator said, that is, Kennedy, they live on Martha's Vineyard, the last survivors of the Gay Head Indian Tribe. And he went on to talk about the status of their lands. He ended his remarks by saying something which I think is most significant: We cannot turn back the clock and restore to the Indians of this country all they once had, but where we have an opportunity, as we do on Martha's Vineyard, and with this legislation, meaning his island trust bill, we should make an effort and a determined effort to restore to the Indians what is rightfully theirs.

Now, in the recommendation by Senator Jackson's committee, it was recommended the Interior Secretary shall transfer such land to the Wampanoag Indian Tribe of Gay Head without consideration, to be held in tribal trust status.

Now, Mr. Chairman——

Mr. **Taylor**. Mr. Hahn, pardon me, could you give me the bill number again and the Congress, and what page of the Congressional Record you are looking at?

Mr. **Hahn**. This was Senate 1929 in 1973.

Mr. **Taylor**. And you were reading from the Congressional Record?

Mr. **Hahn**. I was reading from the Congressional Record of May 31, 1973, page 17579, and from page 17585.

Mr. **Taylor**. Thank you.

Mr. **Hahn**. Now, from my point of view, with the basic responsibility of trying to help these people in the James Group, their situation, we think that this language sets the tone. We are not talking about turning the clock back, as Senator Kennedy said; but we are very interested in doing whatever is feasible legally and politically to return to the Indians what is rightfully theirs.

We know that cannot be done in its entirety, but certainly if there is an opportunity, it should be done as far as can be.

We know that there are certain basic facts here that must be appreciated. First off, you are dealing with a group of people who have been there with their ancestors for 4,000 years at least, and we are dealing with a piece of land in its entirety, the town of Gay Head, that is 3,400 acres. And has 16 miles of beaches.

Now, 150-odd years ago, when the Commonwealth of Massachusetts was a good deal younger, this was considered quite undesirable land; it was poor land, like the land at Chappaquiddick, poor, and not wanted. Today, with a great accent on summering, the great appreciation of water view, beaches, and so forth, and the land value has so jumped in the last 10 years—they had a steady climb before that—but in the last 10 years, or even the last 5, there has just been an enormous jump.

So, we are dealing with land and beach front which have become most valuable. Land that was once given to the Indians because nobody wanted it, now basically the impetus is to take away that land from the Indians or make darn sure that they do not have any say over those parts of the lands which are so critical, and your beaches are one example.

Mr. James is going to point out how many miles of beach there are and yet how many feet will be left to Indian control. Senator Kennedy said that what we are talking about trying to do is to return to the Gay Head Tribe as much control as possible. And, Mr. Chairman, with all due respect, there is not one single thing, either in this settlement agreement, or in the bill that is based upon it, which accomplishes that.

Another factor we must recognize is there are 220 registered voters in Gay Head. Of that number, 141 are non-Indians and 79 are Indians, which include 67 Indians and 12 Indian spouses. So, the political control and the political power at Gay Head is in the non-Indians overwhelmingly: 141 to 79.

The only reason, politically, that there are three Indian Selectment and Indians in other town offices is because they serve at the pleasure of the non-Indians who control the politics of the town; and as long as they stay in line, they stay in office. If they dared step out of line, they would be out of office. That is obvious.

We had a previous speaker representing the Taxpayers Association, and she talked about the terrible cost and drain on resources. Mr. Chairman, that group of taxpayers is all non-Indians, and they are among the wealthiest people of any group that you could look to. So that, personally, I think, is just so much rubbish.

Mr. TAYLOR. How many members are there in the Taxpayers Association.

Mr. HAHN. I do not happen to know.

Mr. TAYLOR. There are 179 people in the town that are not Indian, or families?

Mr. HAHN. There are 141 non-Indian voters on the voting list. Of that number, I cannot tell you how many are members of the Taxpayers Association, but when you consider some of the prices for which they sell and buy property down there, they deal in many hundreds of thousands of dollars.

Mrs. Onassis bought 375 acres just a few years back which adjoins a lot of these for, I recall $1.1 million, or $1.2 million, about $3,000 an acre, if I am not mistaken.

They talk about clouds on title; it has no effect on land transactions down there. The other witnesses who follow from the Indian community can tell you of many that they know of. There has been no effect.

That is a political device to try to add to the pressure of this confounded thing.

Now, there are roughly 350 to 400 known adult members of this tribe who have the right to vote under the so-called tribal council rules, but the fact of the matter is that when this tribal council incorporated, was formed in the early seventies, 1971 or 1972, as a Massachusetts membership nonprofit corporation, it was with the idea of trying to engender some Indian programs that might be of some economic benefit. And it is very true. Those that were the early leaders of that were much the people who are here today in opposition to this proposed settlement and your bill.

It is true, too, that they are the ones that started the one lawsuit that is referred to in the settlement agreement and your bill, but they did it on the advice of Mr. Sockbeson's predecessor, Tom Tureen, who said that, in his view, the tribal council could bring this action on behalf of the tribe legally. But I call your attention to the fact——

Mr. TAYLOR. You mean as a State incorporated organization?

Mr. HAHN. Right.

Mr. TAYLOR. OK.

Mr. HAHN. Consequently, they brought the action. Almost immediately, however, the special town counsel retained by the town of Gay Head filed his appearance in court, and strongly opposed this tribal council action. It is a matter of record, which is among the papers that I gave you before the hearing, there is an extract of his remarks, Douglas Randall, special counsel to Gay Head, in which he challenges the right of the tribal council to bring this action on behalf of the tribe.

Mr. TAYLOR. Who is this person?

Mr. HAHN. That was Randall. His remarks are among the group of papers I gave you, and it says at the top—it gives his name—and that is from this particular law case that you refer to, and he brought a motion to dismiss; said the tribal council is not the ruling group of this tribe; under the law it cannot be. It is not the tribe, and what powers it has are a matter of State law, and you will notice at the end that Mr. Tureen agreed that the question of the legal powers of this corporation was a question of Massachusetts law, and, therefore, added the tribe. He brought an amended complaint, and he added the tribe as a party plaintiff.

Mr. TAYLOR. What is the difference between the membership of the tribe, itself, as opposed to the incorporation that brought the original action?

Mr. HAHN. Well, Mr. Chairman, when the corporation was formed, it had a provision in it that all members of the Wampanoag Gay Head Tribe would automatically be members of the tribal council. When we came into this picture, around 1980 or 1981, and reviewed these things as time went along—we certainly could not do it all at once, because it is very complex and very time-consuming—but, at any rate, we finally—we stumbled on the statement by Attorney Randall which quotes not only him, but quotes Mr. Tureen in the early 1970's as showing that the tribal council did not have the legal power, and Mr. Tureen agreed. That information was never transmitted to the then leadership of the tribal council. They labored under the opinion all the way down through until we advised them differently that the tribal council did have that power. So we showed them.

Mr. TAYLOR. But, basically, the membership of the two organizations—we are talking two different entities.

Mr. HAHN. That's right, but, as things developed, and as the principles of settlement that they referred to, you know, that were not 10 years of intense negotiations. This thing lay idle from probably the early 1970's until the early 1980's without anything substantially taking place. Then there was an intense effort by the Taxpayers Association through to a huge 1-page ad in which they talked about this terrible cloud hanging over Gay Head. All other communities in Massachusetts were able to get the sun through to shine on them with the warm rays, and all that, but not at Gay Head; they had this terrible cloud hanging over them, and they started to create a public relations pressure to force this settlement, and that is when all this agitation started. That is when the James Group, who were very disturbed over the course of some of this, came to us and asked us if we would help them.

We did not know beans about any of it at all. We had to start from scratch. But as we learned more about it, and in an analysis we gave to Mr. James, which I gave you copies of this morning, a letter dated August of 1981, in which I analyzed for him all the ideas behind the proposed settlement, which are essentially what is before us today, and pointed out all the reasons why, from our view, it looked like a very poor thing, because they are talking about restoring the sovereignty, creating a land base, giving the tribe control over its own affairs, and all of that. That is absolute rubbish, Mr. Chairman, because, as you know, from reviewing the settlement agreement, this was essentially drawn by the non-Indians, and it gives them—the non-Indians—essentially what they want and the Indians get nothing.

Now, the non-Indians have got a group of Indians who are willing to play ball, but, you know, the Widdiss name keeps cropping up. This is the Indian group that is agreeing with the taxpayers' group. They would be knocked out of power if they did not go along. Mr. Marc Widdiss would not be a selectman, and he would not be chairman. Mrs. Widdiss is willing to go along. Those that go along with them do not know certain facts about this Strock land, certain facts about this Cook land, and I am going to touch on some of that, but those who live on island are here today, and some who don't but who grew up there, can tell you more than I.

But, at any rate, the basic thing is, you will notice from the settlement agreement there is a creation of a tribal land corporation; the settlement lands go into the tribal land corporation, and it specifically says that will be a State corporation subject to State and local laws, and there is no way that this is trust land in the usual sense, none whatsoever, and there are many strings attached to it.

Mr. TAYLOR. I would just like to interrupt there for a second, and, first of all, for the benefit of you and the audience, I am Pete Taylor. This is Virginia Boylan, and this is Mike Mahsetky. The court reporter probably likes to hear that, too.

Also, I noticed the State Land Corporation in the settlement agreement, but on rereading the legislation, I realize that that is an interim device; that the land would go to the State Land Corporation, and that that corporation would be restricted in any party that it could pass that land on to, namely, the only party it could do so to would be the recognized tribe of Gay Head Indians after the recognition process is complete. It was clearly intended as a pass-through device.

Mr. HAHN. Mr. Chairman, that may be the intent of this bill, but let me——

Mr. TAYLOR. We may even be outrun by events in light of the fact that the Department of the Interior apparently is going to come up with a decision pro or con on the status of this tribe on June 6.

Mr. HAHN. Well, I believe that the settlement agreement—for one thing, it talks about all the parties to the lawsuit and all those who are interested in this settlement, and I believe that your bill's antecedents say much the same thing.

But let me point this out: We brought our own separate lawsuit finally. We did consider an intervention, but withdrew the idea because intervention law is pretty restricted, and we felt the legal base of this land suit that was started by Mr. Tureen—the Non-Intercourse Act—was too limited. So we brought one under the ancient principle, which antedates the Non-Intercourse Act, as you know, and we said that because of this ancient principle there could be no transfer of Indian land or dealings with Indian lands except with the consent of the central sovereign, which dates back to King George's 1763 proclamation.

That was the basis on which we brought the suit, and we brought it as a group of individuals, individually, and as a class on behalf of the entire tribe. And when we filed that suit in the district court, it was dismissed on the basis that only a tribe can bring a Non-Intercourse Act claim. They disregarded the fact that this was essentially an ancient principle claim, disregarded it was class action, the case went up to the first circuit. The first circuit essentially upheld the dismissal, but they came up with this weird reasoning, harking back to the States' rights theories advanced before the Civil War.

They said that the Commonwealth of Massachusetts, by holding the fee title on all these lands, which it had before 1789, coupled with its general police powers, had the right, in 1869 and 1870, to try to make it possible for all the individual Indians to enjoy the same right as all other citizens, and, therefore, they stripped them of their Indian status, removed the Federal alienation restriction, and put them in a position where the non-Indians started their own incursion. They started coming in there, because up to that time, there had been a real question as to how much could go on at Gay Head as well as at Mashpee and some of the others.

Mr. TAYLOR. Was this the action that you brought in 1980, was it?

Mr. HAHN. We brought this action in 1981, as I recall; yes.

Mr. TAYLOR. At that time, there was already pending this other action that was filed in 1974.

Mr. HAHN. That is correct.

Mr. TAYLOR. So what you are referring to was handed down in the 1980's.

Mr. HAHN. In ours; right. That other one has never been tried. There has never been any effort to move that case. It just sat there. You know, that is another thing: Extensive litigation, they never litigated. They never pushed.

Now, at any rate, we brought up a petition for certiorari with the U.S. Supreme Court, and, as you know, the Solicitor General filed a memorandum to the Supreme Court, in which they fully supported both our legal position on the ancient principle approach, as well as on this class action approach, and the only thing that they did—and this is a copy of the Solicitor General's opinion, which I will leave with you—but the only caveat, so to speak, to that was that the Solicitor General said that he acknowledged the fact that there were two land suits, one by the tribal council and one by the James group, and said that question was one of State law, and it was apparently going to be resolved through some litigation back at State court.

Later on, in 1984, there was a bill filed to do the very thing that is here today, to settle these land claims. We came down to that hearing. That was first heard on the House side, and eventually they decided 2 years ago, because there was such an even split, as many within the tribe on the James side as there were on the Widdiss side, that the legislation was not advanced.

But the Supreme Court got wind of the fact this legislation was pending, and finally at the last minute, before they finished their term, they denied certiorari. Now, they did not say so, but we can only assume from the signs that we try to read, as lawyers, that it looked as though the solution was going to be a legislative one, so they denied certiorari and threw the thing out.

Mr. TAYLOR. Did they state the grounds for denying certiorari?

Mr. HAHN. I am sorry.

Mr. TAYLOR. Did they state their grounds for——

Mr. HAHN. They did not. It was a simple denial.

Mr. TAYLOR. Please correct me, or maybe you can identify for me where I may have gotten this impression, but I thought there was a denial of certiorari—maybe it was at the circuit court level I am thinking of—where there was a holding against the 1980 action on the grounds that there was already an action pending in which the tribe was represented and also that the parties-plaintiff in the 1980 action were individuals, and, as individuals, did not have the legal standing to bring the action based on tribal claims of the land.

Am I right about that?

Mr. HAHN. Well, Mr. Chairman, as I said before, the first circuit opinion did talk about that, but the Solicitor General upset that. We think, even though the Solicitor General's opinion is not a binding one, we certainly think it is a far better informed opinion.

Mr. TAYLOR. OK. And the Supreme Court denied certiorari without comment.

Mr. HAHN. Yes; but the Solicitor General issued this in January 1984, and recommended that the Supreme Court hold the thing, and recommended that they grant certiorari and so they held it for several months after that. But, as I say, at that time, it looked—we had a hearing in June 1984 down here at the House side—and it looked apparently to them that legislation might solve the problem. And you know the load that they have to carry, we think it is quite reasonable to say that they looked upon that as a way out.

But the legislation did not go through.

Now, this will be a little disjointed, but I will try to make some points. I will make them as succinctly and as quickly as I can.

Mr. TAYLOR. I will try to keep from interrupting you.

Mr. HAHN. Here is one thing that bothers. On page 2 of your proposed bill, "the pendency of this lawsuit has resulted in severe economic hardships for the residents of the town of Gay Head by clouding the titles"—the people that follow me will deal with that. That shows a concern. But it is a non-Indian concern, Mr. Chairman.

The next thing is, Congress shares with the Commonwealth and the parties to the lawsuit in the desire to remove all clouds on the titles resulting from; well, what about fairness to Indians? Why isn't that the concern? We have had the devil's own job all the way down the line; granted, both of the Federal courts in Boston and by the State courts, in trying to get across the idea that there are two basic groups here with two different views, one willing to play ball with the non-Indians, and the other trying to get much better deal for the Indians, and yet the great pressure back there, unfortunately, is—let's settle the confounded thing; we don't care about all of this intertribal dispute; we don't care. We just want to get rid of it, and there are a lot more votes among non-Indians and a lot more campaign contributions certainly than from the Indians, because, by and large, the Indians are a very impecunious group. They cannot go out and spend $1 million for a piece of land at Gay Head, let alone $50,000 for a small lot.

Mr. TAYLOR. Mr. Hahn, isn't there—it seems to me there is a problem in taking about the non-Indians having a greate vote. If you are talking about the vote for the town council, that may be so, but the testimony of Mrs. Widdiss here is that the tribal membership is in excess of 500, and there are about 350 voting members. That takes in the membership throughout.

Mr. HAHN. That is fair enough. Now, as we pointed out to the House when they held the hearing, and we have got a compilation of all the pledges here in writing from all the people that support the James effort. Now, it is true that it started out at, I think, maybe—well, originally maybe 12 people grew to 40, grew to 100—and now it is approximately 170 firm adult voting members of the tribe.

Now, those two elections that they spoke of——

Mr. TAYLOR. Could they be made a part of the record?

Mr. HAHN. I am sorry.

Mr. TAYLOR. Is that compilation——

Mr. HAHN. Oh, yes, we will leave that with you. We don't need it.

Mr. TAYLOR. Can you tell me then that was compiled?

Mr. HAHN. Well, at various times; 1983 are some of the dates; 1984 are some of the dates. It essentially speaks for itself as you go through it.

Mr. TAYLOR. And all these people are, in fact, voting members of the tribe?

Mr. HAHN. Yes; well, the tribe has never been given a vote, given an opportunity to vote. These are always tribal council surveys. Now, in 1981, when they put out a tribal council vote on the principles of settlement, there was a rough return of, I think it was—I had the figure here.

Mr. TAYLOR. The testimony that we received was 115 favorable and 60 against.

Mr. HAHN. And 60 against. All right. But that was merely a vote on the principles of settlement, and a lot of people did not understand it, and there was no opportunity given to the other side to get out their views. It was kind of a sneak vote, but, at any rate, it was, as they said in their own literature that went with the ballot, this is not on the settlement; this is merely on the principles of settlement.

So, it was a test. But you will notice that of the 350, less than half responded. Then they took another vote, I believe it was in the fall of 1983, and there you had 160-odd in favor and 29 against, but, of course, at that time most of our people doing their level best to boycott the thing. In other words, we advised them to because they had withdrawn, formally withdrawn from the tribal council, which we told them they had a right to do.

Mr. TAYLOR. Just to paly a slight devil's advocate, we cannot count as opponents all those people who did not vote, because if, in fact, you could have rallied all of those nonvoters to your side, you would have won the day in the election.

Mr. HAHN. Yes; but the thing is, Mr. Chairman, this vote was not a tribal vote; it was not even taken as a tribal vote; it was taken as a vote of the tribal council membership, which is merely a State nonprofit membership group.

They did not seek a tribal vote; they sought a vote of the tribal council, and we had already formally resigned en masse from the tribal council. We had withdrawn from it.

Ms. BOYLAN. May I interrupt?

Mr. Hahn. Sure.

Ms. Boylan. Did those who resigned get ballots?

Mr. Hahn. Some did; some did not.

Ms. Boylan. Some did; some did not?

Mr. Hahn. Right. A lot of their names were struck from the tribal council's membership list at that time.

Ms. Boylan. There was testimony earlier that nobody's name had been deleted.

Mr. Hahn. You have got to remember, as Mr. Randall pointed ouyt in 1973 or 1974, after the suit was first filed, that you have got to recognize the legal distinction between the Gay Head Tribe, the membership of which is by right of birth. Mrs. Widdiss, or any of her group, have no authority to screen who will be considered a member of the tribe and who won't. And the tribal council, which is merely a State membership corporation. And that is precisely——

Mr. Taylor. Didn't we establish at the beginning of this that the membership of the corporation is literally identical to the membership of the tribe?

Mr. Hahn. When the corporation was formed, Mr. Chairman, in 1972, yes, they made them automatically members, but we advised them later in the eighties that under Massachusetts law they had a perfect right to withdraw from a corporation that they did not wish to be members of, even though the bylaws, or rather the charter, gave them automatic membership. That did not bind them. You have a right to withdraw from any organization.

You can withdraw from the Lions, the Rotary, from anybody else. If somebody makes you an honorary member or something, you can turn it down.

Mr. Taylor. Or you can even withdraw from the tribe.

Mr. Hahn. I doubt it.

Mr. Taylor. That was established.

Mr. Hahn. Well, I don't know enough about it.

Mr. Taylor. It is a right of expatriation.

Did you, Mr. James, have a comment?

Mr. James. I would like to clear up just one point. I will be very brief, because I have other things to say. It appears that in many people's minds that because the tribal council incorporated, that they would include all of the members of the tribe as being members of their corporation. No one has pointed out the fact that in an election for their officers, if you do not attend a certain number of meetings per year, you could not vote.

Now, there are members of the tribe living in California, and I ask you how someone in California is going to get to Gay Head four times a year to attend the tribal meetings so they can vote for an officer.

I think that is the answer in a nutshell, as far as the difference between the Tribal Council, Inc., and the Gay Head Tribe of Indians.

Mr. Hahn. By far, the greater number of people that are eligible to vote are off island.

Now, again, I would like to point out something on the tribal membership—not the tribal council membership, but the tribal membership. Mr. Campisi talks about using the 1870 census as a base. We strongly disagree with that, because it is only a partial census. There was a very complete census made earlier in that decade, in 1863 or so, by the ten Commissioner of Indian Affairs, called Mr. Earle and the Earle report attaches a copy of the then members of the Gay Head Tribe, which includes a number of families not on the 1870 list.

Therefore, we feel, as an absolute minimum, that the 1870 list and the 1863 list should be combined to give a fair shake to all the families that were recognized back in those times as being Gay Headers. And so I have a copy of that, which I will leave.

Ms. BOYLAN. As I recall, the agreement to use that particular roll was decided in 1973 when the council was formed.

Is that correct or incorrect?

Mr. HAHN. That is correct, and yet——

Ms. BOYLAN. By those members who are now part of what is referred to as the dissident group.

Mr. HAHN. That is right, but Mrs. Weissberg will address herself to that, because that was the only one that they were fully aware of at that time, and they have since come to the conclusion, because various people come forward down there who are on-island Gay Headers who say our families, our ancestors—are not on this 1870 list, but they are on the 1863 list.

And when they went and examined that fact, they found it to be true. So we feel that at the very least the two censuses should be combined so that everybody who feels they have a claim to be considered to be a Gay Head member will be so recognized.

That is just by the by.

Mr. TAYLOR. You indicated that Mr. Earle was the Commissioner of Indian Affairs. Was that for the State of Massachusetts?

Mr. HAHN. Yes; it was. They then had an Indian commissioner.

Mr. TAYLOR. And the 1870 census, was that restricted to a specific geographical area?

Mr. HAHN. Not to my knowledge.

Mr. TAYLOR. To the town of Gay Head?

Mr. HAHN. Not to my knowledge, no.

Mr. TAYLOR. So the 1870 census, then does purport to be a complete census of the entire tribe membership?

Mr. HAHN. Right. But through some means that we cannot explain because we are dealing with over 100 years later, a number of families were left off, and there is no good reason why they should have been. And certainly they feel that they want to be included. And excluding them by this arbitrary choice of the 1870 census is just not fair.

Mr. TAYLOR. Can you tell us approximately how many families contend that they were left off?

Mr. HANN. I can't, but maybe Mrs. Gentry and Mrs. Weissberg can.

Now, Mr. Chairman, I would like to point out something on this Strock land, if I may. One of the documents that I gave to you this morning included a—bear with me just a second until I can find my copy.

This is a group of documents, the top of which can be flagged by Goodwin Proctor & Hoar. This is dated March 23, 1981. Let me dwell just for 1 minute, if I may, on this so-called land base being created for the Gay Head Tribe. I hope that it is clear that certainly under the settlement agreement, which is incorporated in the proposed bill, there is no way that tribe will have control over this land, otherwise the Attorney General would not have agreed to it.

And in no way is the tribe a party to this agreement. The tribe is expressly excluded from this agreement. They are only referred to as the alleged Gay Head Tribe, and they are not a signatory, so the only ostensible authority for signing away the Gay Head Indian rights is through Gladys Widdiss' signature as head of the tribal council, which I hope we pointed out cannot under Massachusetts law or Federal law, be considered the ruling body of this tribe, nor has the right to speak for all these tribal members, particularly where about half of them have said they do not want to be spoken for.

But, at any rate, let's get back to this. The Cook property they talk a lot about is not part of the settlement lands. It is land that surrounds the Herring Creek, and, in fact, the Cooks were close relatives of Mr. James. There are only about 2½ acres involved there. The title is in terrible shape. The town, I think, took it for nonpayment of taxes, and it is not buildable. It is very rough land; there is only a little bit of it, and it is on either side of Herring Creek.

So that really is not an important factor when we are talking land base.

As far as the Menemsha Neck lands are concerned, those are all in private ownership, and the settlement agreement points out that only if these people are willing to sell could any of that land be picked up and added to the settlement land. And there has been no expression of any willingness by any of those people to sell.

So we really come down to the common lands and the Strock lands. Now, the common lands are 238 acres. They include the face of the cliffs, the cranberry bogs, and Herring Creek. And expressly in the settlement agreement and in your legislation the beach front, which is what? Whatever number of feet or fraction of a mile there is of that and those common lands that are the face of the cliff lands are expressly excluded from even the Tribal Land Corporation control.

And that is true of all the beaches. I mean, there are 16 miles of beaches. Mrs. Onassis, for example, controls exclusively over 3,000 feet of beach front and over 7,000 feet of front along a salt and fresh water inlet. No Indians are allowed on any of that, obviously.

Mr. TAYLOR. And no non-Indians are, either, if I recall.

Mr. HAHN. It is all barb-wired off; no trespassing.

And yet, as you heard from earlier testimony, the Indians are called a fishing tribe; but they are not going to get any fishing rights back. The only rights given by the settlement agreement and by your bill is the right to hunt except with crossbows and guns. What are they going to hunt with? Stones, or slings, or what? That is pretty silly.

But the important thing is, they do not get their tribal fishing rights back.

Mr. TAYLOR. Well, that is a question that I would like a little explanation of, anyway. We asked this earlier to one of the witnesses, and I cannot recall, but just let me reread the question to you.

What are the present hunting and fishing rights of Indians at Gay Head? And are they the same or different from others?

Mr. HAHN. Right now, the hunting and fishing rights of the Gay Head Indians, as far as I know, are no different from those of any other citizen of the Commonwealth of Massachusetts, and it is our view that they should have a special status, because probably fishing down there is the most likely means of income for the Indians.

Mr. TAYLOR. We are talking ocean fishing, aren't we?

Mr. HAHN. Right. Well, I don't know. There may be some interior fishing that is worthwhile, too, in the inlets, but I know that you are talking scallops; you are talking sea clams; you are talking bass.

Mr. TAYLOR. Yes; is the right to fish those licensed by the State?

Mr. HAHN. No; the State licensing is done, really, by the town officials, and they can favor those they want and exclude those they do not like, as some of these people can tell you. You know, by having opposed a lot of this, they have had a lot of trouble getting their licenses.

Mr. TAYLOR. I think we have another comment here.

Mrs. WEISSBERG. I just wanted to say now that the Herring Creek has been discussed a great deal here. Believe it or not, today, the Herring Creek stands unused.

Mr. TAYLOR. I think someone said that.

Mrs. WEISSBERG. Now, this is something that is new in the history of the town of Gay Head, I am sure. There have been times when outsiders have leased the Herring Creek, but this year no one is using the Herring Creek, and when you think about our history as an Indian tribe, where our whalemen were famous--practically all of our uncles caught a white whale—and to think that Herring Creek, it's just a beautiful little creek, much of the walk is falling apart, and there it stands. It hurts.

I have not dug quahogs and clams because I refuse, as an Indian and a member of the Wampanoag Tribe of Gay Head, I refuse to go in the town hall and pay $30 for a permit to get food for my own consumption, and then, in doing research, I do know that up until 1939 Indians in the State of Massachusetts could go fishing anywhere in Massachusetts as long as they used it for their own consumption.

Mr. TAYLOR. Was that by virtue of a State statute?

Mrs. WEISSBERG. Yes; Marine Fisheries, chapter 130, was all changed around, and when they did that in 1941, when it was all settled and rewritten, we were left out, as usual.

Mr. HAHN. Mr. Chairman, for the record, this is Thelma Weissberg, W-e-i-s-s-b-e-r-g. She is a former commissioner of Indian affairs for Massachusetts, a former selectwoman at Gay Head, and a lifelong resident.

To my left is Frank James, who was first chairman of the Indian Commission in Massachusetts, when Mrs. Weissberg was a member. He grew up at Gay Head. He does not now live on Gay Head, and it is his name which is given to this group we call the James group.

Now, the last thing that I would like to address myself to, and then I am going to let the Indians take over is the Strock land. I think that I pointed out that the settlement lands consist of the common lands, 238 acres, and the Strock land, with an alleged 175. Obviously the common lands cannot be used for building. The face of the cliff lands, the cranberry bogs, and Herring Creek are in no way available for any building, any house lots. There could be, as I understand it, a fishery developed along Herring Creek, but Mrs. Weissberg will get into that.

The Cook lands are not part of the settlement lands, and the Menemsha Neck lands, nobody has indicated any willingness to sell, so it brings us down to Strock, and it brings me back to this thing with Goodwin, Proctor & Hoar at the top.

Now, the background of that is simply this: There is a gentleman named Strock, S-t-r-o-c-k. He was a dentist, I believe, who lived in Newton, MA, who had ideas of making a lot of money on development of land on Martha's Vineyard, and over the course of the years acquired a number of parcels, including several at Gay Head. Eventually, his corporations, went bankrupt. And so all his land at Gay Head, along with other land on Martha's Vineyard came within the purview of the bankruptcy court of Boston.

These so-called Strock lots were appraised in 1981. Goodwin, Proctor & Hoar represented the two trustees in bankruptcy, and they had an appraisal done. Now, this is a cover letter, and then when you turn the page, you will find an appraisal report: property of Strock Enterprises, Gay Head, MA, March 19, 1981. And these were done by a fellow—his name is James Howell, a registered broker for the Commonwealth, a resident of Martha's Vineyard for 38 years, and he has all his credits here at the end, and then there is a map that shows in dark coloring where these properties are.

Now, I am going to quickly run through what he did. First off, the total properties that he is referring to come to approximately 98 acres. There are no 175 acres here, number one.

So when they talk about all the 400 acres of land being given to the Wampanoag Tribe for a land base, that is a figment of somebody's imagination or exaggerated talk. There are only 98 acres in his report.

Now, he goes through it. Parcel 1—I will quickly hit his analysis—Parcel 1: a 15-acre tract northeast of Marshaprill. Many good water views, access by Old South Road, and Ancient Town Road, so there are 15 acres of probably buildable land.

Parcel 2: 2.85 acres; no access; no road to the property exists at this time.

Parcel 3: 2.3 acres; low wetland; no current means of legal access. There appears possibly to be one building site on the southwest part of the lot, if access can be provided.

Parcel 4: Approximately 11.5 acres of heavily wooded land; no means of access; considerable areas of standing ground water in this parcel at this time of year—March, this is; that's spring, so at least in the springtime it is wetland.

Parcel 5: 2.75 of an acre; no legal means of access. There are substantial amounts of wetland on both sides.

Parcel 6: All sand. He doubts that the town would ever issue a building permit. Slightly one acre; close to sand dunes; beach sand and sparse shoreline vegetation. No building permit on that one.

Parcel 7: 2.5 acres of sand dunes; not likely to get construction permits.

So, he sums that up by saying Parcels 1 through 7 represent the total land of Strock that is free of title defects and partial interest, but because of lack of access and environmental regulations, only Parcel 1 could be readily marketed.

Mr. TAYLOR. And how many acres were in Parcel 1?

Mr. HAHN. Fifteen.

Mr. TAYLOR. Fifteen acres?

Mr. HAHN. Fifteen acres.

So, now it goes to Parcel 8. Together, some little lots comprise 3.65 acres of brushland. The title to both is defective, and there is no access. The title, or course, could be cleared up if there was condemnation, but no access right now.

Parcel 9: 5 acres, similar to the previous one. Title defective. So that is a possibility.

Parcel 10: 25.7 acres. That is where the Government during the war had a loran, l-o-r-a-n broadcast station. The Strock people have one-third undivided interest in that. They do not have the full title, anyway, so the land is good, but there is a problem on how much Strock has.

Parcel 11: 10.2 acres in size; high dry land. There could be access if there was a road built through it, but right now there is no access, and the title is defective. So, essentially, it is no access.

Parcel 12: 11½ acres. About 25 percent of it is wetland. The rest is similar to the prior lot, which is OK. No access, however.

Parcel 13: About 3 acres; upland vegetation; excellent water views, but Strock only has a half undivided interest in that.

Parcel 14: 1.17 acres; similar half undivided interest.

Then the appraiser sums it up: Parcels 8 through 14 are tracts of land with defective title or substantial partial interests, and they could not be readily marketed on a retail basis—primary value to the other owners of the subject lots.

So, what I am saying is, the government of Massachusetts and the Government of the United States are being asked to contribute $3 million—$3 million—essentially to buy the Strock land.

Now, let me tell you one more thing about the Strock land. One of the recommendations that you will notice on the cover letter——

Mr. TAYLOR. Before we pass beyond that, what was his final appraised value of all of this land?

Mr. HAHN. $100,0000 to $120,000. I did not state it, but that is what it is, $100,000—the whole thing—$100,000 to $120,000.

Mr. TAYLOR. Does that show on the record you have been reading from?

Mr. HAHN. Yes; it does.

Mr. TAYLOR. And is that record being made a part of the record here?

Mr. HAHN. Yes, sir.

[Material appears in the appendix.]

Mr. HAHN. Yes, sir; we will leave it. Well, you have already got it.

Mr. TAYLOR. I have it up here?

Mr. HAHN. Right.

But let me take you back to the cover letter. He says:

> Enclosed is a written appraisal report with respect to these lots, appraised value, $100,000 to $120,000 as contrasts with the proposed selling price of $100,000. Since

the appraisal is in accordance with the old representations I made at the hearing, I believe it appropriate to enter an order approving the sale. The proposed order is enclosed. Would you return—

Now, look, what happened, as a result of that recommendation from the trustee who enclosed this report of the appraiser, a group of unknown lawyers, calling themselves Anchor Pacific Partnership, got an approved motion for an option to buy these properties at $100,000. That was signed by Judge Lawless, and that stands today, Mr. Chairman. These fellows are in the background, having not even invested a cent; they do not have to pay the $100,000 until they turn this property over.

Mr. TAYLOR. They are having to make monthly payments on it.

Mr. HAHN. I am sorry.

Mr. TAYLOR. They are making some sort of monthly payments.

Mr. HAHN. Not to my knowledge.

The thing has been held until such time as they might be able to sell it.

Mr. TAYLOR. I would say just one other thing with regard to the bill. The bill does authorize $3 million. First of all, the State is now talking about kicking in $1.5 million.

Mr. HAHN. Right.

Mr. TAYLOR. It also directs the United States to enter into negotiations with these people for the acquisition of that land, and——

Mr. HAHN. Right.

Mr. TAYLOR [continuing]. If they cannot come to an agreed-upon price to pay for it, then it provides for an independent arbitrator to be named to fix a price and these people would presumably be compelled to give up their option or sell it at whatever price the arbitrator fixed.

Mr. HAHN. You are absolutely right, Mr. Chairman. But what I am trying to show is that this has been held out all the way through as being such a good thing, yet everything is on such a flimsy foundation, including this highly touted Strock land.

I think that if you will read the appraisal report, you will see how exaggerated the talk has been as to acreage, as to building potential, as to access and all the rest.

I do not think this has ever been brought out. My son found it by going through the bankruptcy records, a heck of a job, because they are a huge pile, but he found this, and we found that motion, and you have got a copy of that motion which was allowed by the court, giving this option to buy.

So we have advised the James group that from the point of practical politics and practical law, this whole thing has really got an enormous non-Indian orientation because you have got this group calling themselves Anchor Pacific Partnership standing in the wings waiting for this money. They do not care whether it is all Federal, or partially Federal, partially State, because you know the bill 2 years ago had a provision in it which, thank God—you have struck now—that would have allowed any moneys paid to be considered on a condemnation basis and not subject to tax.

So, at that time, they stood to take whatever profit tax free, but at least you have knocked that out.

What we are getting at here is, the flimsy foundation that a lot of this talk that has been pushed and pushed and pushed rests on, and it is all for the purpose of just killing off these claims without regard to so many of the things that these folks are going to say mean a lot. There is practically an even split. They are fond of calling the James group dissidents, but the fact of the matter is, you have got a group, you have got two opposing groups of equal numbers within the tribe with essentially different views.

You have got one that is willing to play ball with the non-Indians, and you have got another that is not willing to sell out so easily. That is the way they look at it, and I think that that is essentially all I can say.

I will leave things with you.

We got an appeal from a judgment of the Superior Court, Mr. Chairman, which raises the issue of the right of the tribal council as a Massachusetts corporation to represent the views of the James group and speak for them when they don't want to be spoken for.

We have got this membership list of pledges, which shows where the James group support comes from. This is the memorandum from the Solicitor General, and this is the 1863 census.

Mr. **Taylor**. We will take that into the committee files. We may make that part of the record when we receive the transcript.

Mr. Hahn, thank you very much for a very detailed statement, and I apologize for interrupting with all the questions.

Mr. **Hahn**. Not at all. I just hope that we made some of these views come through.

Mr. **Taylor**. OK.

[Prepared statement of Mr. Hahn appears in the appendix.]

Mr. **Taylor**. Mr. James, do you have a statement?

STATEMENT OF FRANK B. JAMES, LEADER OF UNITED AMERICAN INDIANS OF NEW ENGLAND

Mr. **James**. Thank you, Mr. Chairman, and members of the committee.

I am Wamsutta—Frank B. James. My mother was born in Gay Head, MA, and my father was born in Christiantown, which is now West Tisbury on Martha's Vineyard.

At present, I reside in South Orleans, MA.

For the past 29 years, I have held the position of director of music at the Nauset Regional High School in Eastham, MA.

I have been involved in native American affairs in southeastern New England for many years. I was elected the first chairman of the Massachusetts Commission on Indian Affairs, when appointed by Gov. Francis Sargent in 1976.

I am the current leader and moderator of the United American Indians of New England, and I was president of the Federated Eastern League from 1974 to 1982.

I was a member of the Wampanoag Tribal Council of Gay Head, Inc., but I withdrew my membership because I believe this State corporation is illegally representing the Gay Head Wampanoag Tribe.

In addition, I believe this State corporation is acting in ways that will destroy the Gay Head Indians' cultural, aboriginal, religious, hunting, and fishing rights, even under the Federal laws designed to protect these rights.

I strongly oppose the passage of this bill before you—S. 1452—for the following reasons:

No. 1: A State corporation, governed by the laws of an individual State, cannot and should not represent an Indian tribe.

There is presently a suit before the courts of Massachusetts claiming that this State corporation had no right to sign this settlement proposal on behalf of the Gay Head Tribe. Any decision on this Senate and congressional bill should be postponed until that suit has been resolved. I am sure our attorney can answer any questions you may have on this suit.

No. 2: Although I have withdrawn from the State corporation, the officers and directors have continued to use my name as a Gay Head Indian to obtain Federal funds for the benefit of the State corporation.

I have never received any notice of Federal grants that have been funded to the State corporation.

I have not received any information or results of projects, surveys, or studies that the State corporation has conducted, including the census of the Gay Head Tribe and the petition for Federal recognition.

I may have withdrawn from the State corporation, but I cannot withdraw from the tribe, but the State corporation has never informed me since my withdrawal about what it is supposed to be doing on behalf of the tribe.

In fact, I have never received a current copy of the settlement proposal, although I have read in the newspapers that the proposal has been modified since it was originally signed.

I believe the majority of the entire tribe has not received a current copy of the settlement proposal.

This State corporation does not serve all Gay Head Indians as it claims.

No. 3: The State corporation has used fraud and deceit to entice Gay Head Indians to support this settlement. Members of the corporation have told various Gay Head Indians they will get a free house lot if they support this settlement.

But they have not told these Indians that they will still have to get a mortgage to build a house; they will still have to pay taxes. And if they do not pay, they will be kicked off their house lots.

And how many house lots are there supposed to be? This land is to be purchased with the moneys from this bill has not even yet been surveyed. Nobody knows exactly where it is.

Would you gentlemen, as individuals, buy a piece of property when you do not know the boundaries?

And who is going to get a house lot? Is there going to be a house lot for every Gay Head Indian? Do you think if I wanted to move back home, as we call Gay Head, that I could get a house lot? But I will bet you that officers and directors of the State corporation will get a house lot if this bill passes.

In addition, the State corporation has not permitted all Gay Head Indians to vote on this settlement.

And it has promised Federal moneys which it cannot deliver to individual Indians in exchange for support for this settlement.

On page 2, on line 3, this bill states that the land suit by the Gay Head Indians has caused severe economic hardship to the residents of Gay Head because it has clouded land title, thus preventing the sale of property.

This is a false argument. It is simply not true that land in Gay Head cannot be bought or sold, or that people cannot get mortgages. It is a scare tactic being used by the taxpayers association to frighten people.

If you look at the Dukes County registry of deeds, you will find a list of properties bought and sold in Gay Head in the last 10 years that is longer than my testimony here today.

In addition, I submit for the record the following real estate ads from the local Vineyard Gazette newspaper, one dated May 3, 1985, an ad for sale: a 3-bedroom house, 4½ acres, $470,000. One on February 14, 1986, a 2½ acre building site for $170,000. To this Indian, those prices are not severe economic hardships.

I am further opposed to this bill because it is nothing but another land grab by the whites against the Indians.

Who is going to get this $3 million that is to be appropriated for this land? Not the Gay Head Indians.

Just four non-Indian attorneys who offered the U.S. Bankruptcy Court $150,000 if the Federal Government bought the land for $3 million.

My math tells me that this is a profit of at least $750,000 for each of the four.

And why should the Federal Government pay to buy Indian land when the Indians have a good claim to the land, anyway? Why not let the judical process take its course.

Perhaps it is because the non-Indians believe the Gay Head Tribe has a valid claim to its reservation.

In addition, under this bill the Gay Head Indians will not own this land, anyway. Nor will the land be held in trust for them by the Federal Government. This bill goes against all Federal Indian policy for the last 100 years, which is to protect Indian land.

This land will go to another State corporation. And who knows what Massachusetts could do to this State corporation in another 25, or 30, or 50 years.

Supporters of this bill say it does not matter how title is held because it will always be Indian land. I say it was Indian land in 1870, when the State of Massachusetts took it away from the Gay Head Tribe and made it a town, even when the Indians voted not to have a town, but to keep the reservation.

And what good has Indian land done the Narrragansetts in Rhode Island? How many Narragansetts are living on their Indian land the Federal Government bought under their settlement proposal? The Narragansetts are even supposed to ask permission from the State before they can use their Indian lands.

In exchange for this dubious benefit, the Gay Head Indians are supposed to give up all of their rights forever.

Page 3, lines 6–25; page 4, lines 1–24 of this bill refer to extinguishing all aboriginal claims and titles of the Gay Head Indians.

The United States has been trying to extinguish Indian rights since 1786. And this is just another example of trying to get rid of the Indian.

There are no hunting or fishing rights protected under this settlement. Out of the 16 miles of shoreline on Gay Head, this new

State corporation for the Indian land will have control of about 15 feet, and they could lose that, too, because it is subject to taking under this settlement.

Once this bill is signed, all that could be Indian in Gay Head will be gone forever. For the economic benefit of a few officers and directors of the State corporation and the white landowners, the Gay Head Tribe will forego all of its rights forever.

Even if the Federal Government re-recognizes the Gay Head Tribe still exists and never has been terminated, the remainder of the reservation will be gone and cannot be returned to the rightful owners.

Those Gay Headers who presently do not live down home will be driven further away from their heritage and their roots.

I say the passage of this bill will destroy all you hope to preserve. You will unleash unrestrained building in Gay Head with the passage of this bill. Look what happened in Mashpee, which became the fastest growing town in Massachusetts.

And look what this growth has cost them. The Indian cannot afford a condominum in the town where he was born, and he cannot even find a place to rent. Now, even the wells are polluted, and the water is not safe to drink.

In addition, passage of this bill will create more factionalism among the Gay Head Indians, themselves, as they fight to see who will get a house lot and who will get all the Federal money that has been promised by the State corporation.

I ask if this is part of the scheme of those who favor this bill? To me, it is another example of divide and conquer the Indians.

Furthermore, I challenge you gentlemen to walk in this country for over 60 years with a face of my color, and I am quite sure that long before that time, you will realize that this bill smacks of pure racism.

Why does the taxpayers association favor this bill?

Why are they opposed to Federal recognition for the Gay Head Tribe?

Why are they afraid of the Indians?

In the long history of the suit, not one Gay Head Indian has said the purpose was to take someone's house and land.

Because the non-Indian landowner puts up no trespassing signs, does he think the Indian will do the same? Because the Indian wants free access to the beaches, does the taxpayer think he will not have it? Why does the taxpayers association want to limit the rights of the Indians? To get rid of them?

In my opinion, the true, honest resolution of the Gay Head land claims can be accomplished by returning the entire reservation to the Gay Head Tribe and allowing them complete sovereignty over their own affairs.

All landowners would retain title to their land. They could give it to their children, or leave it to someone in their will. But if they wished to sell it, the tribe would have the right of first refusal.

With the return of the reservation, the tribe would have a base from which they could generate income to support themselves and funds to purchase the land.

I am not proposing a harebrained scheme. I live next door to where it has been accomplished—the Cape Cod National Seashore.

There, land is being preserved and protected for the generations to come, yet people live in a house and towns quite successfully within its boundaries.

And make no mistake: the Gay Head Indians could govern themselves quite successfully, also. They have lived on Gay Head since 2270 B.C. They lived there well and in peace until the white man came.

With the return of the reservation, they could live there another 2,000 years.

I must say that I do not know if what I and others who are opposed to this bill say here today is going to make any difference at all. I wonder, in view of the way the Indian has been treated by the United States in the past, if this hearing is a charade.

I know the forces and resources gathered in favor of this bill are many. I know there are enormous political pressures being exerted to pass this bill. I know some of the members of the taxpayers assocation used to work for the Federal Government, and I know what find of influence that means.

Those of us opposed to this bill have not got that kind of influence. I cannot even get a meeting with my Congressman because I oppose this settlement.

I also know the lies that are being told: that only a few of us are against this bill. Not so. The majority of us Gay Headers are opposed to this bill and this settlement, but Indians do not play power politics well.

And we do not have the resources to combat the lies.

For example, the town of Gay Head paid for the selectmen to come here today.

The State corporation paid—with Federal money—for its officers to come here.

The Native American Rights Fund uses Federal moneys to pay for the high-powered attorney to come and go in Washington to lobby as he pleases.

Members of the taxpayers association can well afford to pay to come if they do not already live in the Washington area.

I paid my own way down here today. In addition, I have to lose income from my job to attend this hearing. But I will not agree to the termination of the Gay Head Indians which this bill will do. I will not agree to signing away the land. The land is sacred.

And I will not agree to signing away the rights of all the Gay Head Indians to come.

I ask you, in your deliberations on this bill, to remember the Indian philosophy that you are responsible for your actions unto the seventh generation.

Seven generations is not a very long time compared to the 4,000 years the Indians have lived on Gay Head.

The lawmakers who pass this bill will destroy forever the Indian culture of Gay Head, just as if they dropped a nuclear bomb on Gay Head.

In fact, S. 1452 is a nuclear bomb for the Gay Head Indians. The fallout will be with us for years.

May I remind you, in conclusion, that the Indian way is not necessarily the white man's way. As Sitting Bull said: "If the Great Spirit had wanted me to be a white man, he would have made me so in the first place. He put certain wishes and desires in your heart. He put other wishes and desires in my heart. Both are good in his sight. It is not necessary for eagles to become crows." Wamsutta.

Mr. TAYLOR. Thank you.

[Prepared statement of Mr. James appears in the appendix.]

Mr. TAYLOR. Mrs. Weissberg, do you have a statement?

I would like to urge the witnesses to summarize, if I could. This hearing originally was scheduled to end at 4 p.m. It was very interesting, and we had a period here until 5:10 p.m.

At some point, we are all going to get kicked out of here, so I would urge, if you could summarize, and we will make the written statement a part of the record as if they had been read.

Mrs. Weissberg.

STATEMENT OF THELMA VANDERHOOP WEISSBERG

Mrs. WEISSBERG. Thank you, Mr. Chairman.

It is very difficult for me to continue right now, because, believe me, I feel the same way as Frank James.

I think the thing that disturbs me so are the bold-faced lies. Maybe I could summarize my speech very much, because right now I feel sick at heart.

I do want to say a few things, though. For instance, when Luther Madison, the so-called medicine man, sat here, and Gladys Widdiss sat here, and said that they were born and brought up in all this time on Gay Head, it is not true. I am 59 years old. With the exception of a couple of winters, and a couple of summers, and maybe 6 years out of my 59 years, I have lived on Gay Head, and if I don't get any nails, any more nails in my driveway, if I don't get any more cutoff deer heads with a knife in their forehead—which I got when my husband who is no longer living, was recovering from a heart attack—and if I don't get any more hate letters using his deceased name, I will continue to live on Gay Head.

And I am going to continue to fight this. I don't know how; I don't know if I will accomplish it, but just maybe, if worse comes to worse, the thing that I would not like to see is two bands of Indians in Gay Head. But that is just a thought.

Things that go on in Gay Head are not any different than any other reservation in any other town, but the point of it is, we have always lived on Martha's Vineyard, and you know that is kind of different. You have to go across the water. We have been there all those years by ourselves.

I had a lot of things here. There are a lot of frivolous things, because having lived in Gay Head all my life—I attended the Gay Head schoolhouse; I caught frogs beside it; I watched the boys being sent for a bucket of water and came back with only a half of bucket of water; I, too, had to stay after school for falling in the ice when we were told to go on the pond; I listened to the boys tell us of the teacher smoking in the outside john—these were the frivolous things that I was just going to mention, but I will, you know, continue.

I put up with the tourists when I was a little girl. I have my oldest sister here—one of my oldest sisters—here today, and I, you know, used to sell pottery that was from the cliff. I used to hate to see those tourists come. I though, well, they are kind of nice people, even though they do use the camera all the time and ask you stupid questions like what time does the light go on, and you would say to them, at sundown, at sunset, and they would say, yes, but what time will it go on tonight because it is foggy? You know, we would just laugh at that.

So I really know what it means to live on Gay Head, pick berries, roam around the beaches. There were no no-treaspassing signs. Some of the untruths that have been said here today, you know, it does not make any sense.

Now, I—and my niece is also here today—spent 2 days in the Dukes County Courthouse before I came here. Since 1974, there have been 250 land transactions. Now, some of them were big pieces of land that sold. Some of them were not, but always there was that greedy person sneaking around to take advantage of a little old lady that is almost blind, someone taking advantage of a woman, bringing her cookies, getting her to sign off; and we do have someone here that is here because her family does not have a house to live in and sometimes has to sleep in the woods.

So, you can see, we too, want this to go through, but we want it to go through with our rights. I told you about the herring creek. What Indian does not want to have the fishing rights? Of course we should have our fishing rights, particularly if we could at least go to the pond and gather shellfish and all up until 1970—but things are always happening. Even Massachusetts has done so many things to us; for instance, they send the buses down there, and because somebody cannot sell a hotdog or a Belgian waffle, they will tell the buses: yeah, go ahead; park where you want to; we don't care where you park.

The property—I can tell you one thing about property. When pieces of property have been listed in the Vineyard Gazette, which is one of the largest local newspapers, a number of years ago, almost every person in Gay Head petitioned in the land court of Massachusetts, and what does that mean? Somebody has to buy; somebody has to sell. We had little interest. Some people ended up after the long land court deal was over, they had 22 cents; they got $2; I got $50. You know how much that land is being sold for today? There are four lots, and out of that four lots, it was advertised one week in the Vineyard Gazette. Those lots are being sold for $1,194,000.

So when any person sits here and tells about those land sales, that is a bold lie. They have been going on since 1984.

Somebody might now say; what kind of an Indian sells the house? I am guilty of selling my house. I sold my house because I had to when my husband passed away. I am in the process of selling a camp because of health reasons and the trips I take to Boston, Washington, telephone calls, and such; so don't tell me that you cannot sell.

I think that is about it. I list in my testimony here a number of things that Massachusetts and the Federal Government have taken, but, in ending, I want to say a couple of things.

As for the taxpayers association, I am ashamed it has many, many Jewish members. How I wish my husband was living; he was a rabbi. Perhaps he could explain to me clearer the situation in Gay Head. I hope and pray the same does not go on in the Middle East.

My last statement will be: I find it necessary to tell you I no longer attend Gay Head town meetings, not since Henry Sockbeson, the lawyer for NARF, attended the meeting where we voted on the land settlement. That is all I have to say.

Mr. TAYLOR. Thank you very much.

[Prepared statement of Mrs. Weissberg appears in the appendix.]

Mr. TAYLOR. Next. we will have Helen Manning, Joan Patadal, and Beatrice Gentry.

Let me just ask you, Joan, have you submitted written testimony for the record?

I might say the record will stay open for an additional 2 weeks for any other submission.

Ms. PATADAL. This is Adriana Ignacio. She is a Gay Head Wampanoag. She is married to a northern Ute, and she has just recently returned home to live on Martha's Vineyard after living in Utah for 3 years.

This is Roland James, and this is Rosalie Francis. She lives in Vineyard Haven, MA, one of the towns on Martha's Vineyard. She is a lifelong resident of Martha's Vineyard. She has lived most of her life in Gay Head, and now lives in Vineyard Haven, at the other end of the island.

And this is Ms. Helen Manning, and she is a school teacher, with friends, and she has taught in the Gay Head Public Schools in the last 15 years it existed, in the grades one through six, and actually the Gay Head schools was abolished because of financial purposes. She taught in Oak Bluff.

Mr. TAYLOR. For the record, the person making the introductions is Joan Patadal.

Mrs. IGNACIO. Shall I begin?

STATEMENT OF ADRIANA G. IGNACIO, MEMBER OF THE WAMPANOAG TRIBE

Mrs. IGNACIO. I am Adriana Giles Ignacio, a member of the Wampanoag Indian Tribe of Gay Head. I graduated from the Institute of American Indian Arts in Santa Fe, NM. My husband is an enrolled member of the Northern Ute Tribe of Fort Duchesne, UT, and we have three daughters. We have just moved back to Gay Head, where we will be building a home and living there. All of my life I have lived with, and participated in, Indian functions.

The Federal Government has a responsibility to correct an error that they made when they allowed the State of Massachusetts to wash their hands of us. From the outset, the interference and the stance of the Gay Head Taxpayers Association has resembled the paternalism which historically has characterized non-Indian relations with tribes nationwide.

Two groups stand to gain by the present agreement: the Taxpayers Association and the group of lawyers holding the Strock land. How can we be given something that was and is ours to begin with? And why do we need Taxpayers Association approval before exercising tribal self-determination in assuring for future generations what was and still is ours? It is not right for others to define what is or is not of value and meaning in our tribal heritage.

The land settlement, as it reads, is saying that hereafter we can no longer claim lands or even exercise our hunting and fishing rights, which to some of us is our only source of income. The settlement is an insult to any intelligent-thinking human being.

I object to the subdivision of some of the lands that the Taxpayers Association has decided that we could acquire. For example, the common lands, but not the beaches, that always were a part of the common lands. The Strock lands, some of the lots have no right-of-way. We do not know how much of the Strock lands can be built on due to town and State building regulations concerning the wetlands.

As I understand, the Federal Government will not spend millions of dollars on lands that will not be held in trust and with so many strings attached. For example, item No. 5, pertaining to the Cook lands, shall not be part of the settlement lands; shall remain subject to taxation and foreclosure in the same manner as any other privately owned property in Gay Head. I know of no other Indian lands in the United States that are subject to tax by surrounding towns or by the State that they exist in.

Any structure on this property is subject to Federal, State, and local laws, including the Martha's Vineyard Commission.

If this settlement goes through as it now stands, the only protection we would have is that the lands be put in Federal trust status.

I ask you to be just and fair to my children and the remaining Indian people of Gay Head. We would like to feel it is still our home. It is all we have left that we can call Indian land. The land and the people are the same.

Thank you very much.

I also have a letter to you, to the committee, by Mrs. Shirley Jardin, who was unable to come. I would like to submit it.

Mr. TAYLOR. We will make that a part of the record.

[Prepared statement of Mrs. Ignacio and letter of Mrs. Jardin appears in the appendix.]

STATEMENT OF ROLAND JAMES, MEMBER OF THE WAMPANOAG TRIBE

Mr. JAMES. I am Roland James, and I am a member of the Gay Head Wampanoag Tribe.

I come before you today to speak in opposition to the passage of this bill. Since the dates and figures have been stated over and over again in the many legal documents that have been filed by all parties during the 12 years this settlement proposal has been debated, and, as we all know, statistics can be manipulated to bolster any side one takes in an argument, I do not feel they need to be repeated today. Instead, I am going to speak of the negative impact this bill's passage will have on my people.

I believe that the one thing that disturbs me most, if you allow this legislation to pass, is never again, and I say never again, will Gay Head Wampanoags, whether singularly or as a tribe, will be able to sue for land, land which is rightfully owned by my people.

I feel very strongly that it is wrong for any of us, Indian or non-Indian, to feel that we have the right to negotiate or legislate away the rights of unborn generations.

The State corporation has told people that if the settlement, as written, goes through, they will be able to use the land as they see fit, perhaps to build homes or make a living. This sounds pretty good on the surface.

We should all realize that once government, be it State or Federal, gets involved, one cannot even buiid a doghouse without having to go through endless paper drills, impact studies, conferences, meetings, and the like; in short, loss of control forever.

If this bill is allowed to pass, we will have a little less than 5 percent of our land, and land that we can never hope to get.

I am also disturbed——

Mr. TAYLOR. Mr. James, let me ask a question on this.

Mr. JAMES. Yes.

Mr. TAYLOR. Is it your contention that the land that is currently in private ownership is, in fact, Indian land?

Mr. JAMES. I believe that strongly that the 3,400 acres that was originally the reservation down there is Indian land; yes, sir.

Mr. TAYLOR. That encompasses the entire township of Gay Head, does it not?

Mrs. IGNACIO. Yes, May I add to that, please? I am sorry.

I was with may aunts at the county courthouse, looking up the land sales that were made between 1974 and 1986. After the lands were described, the lot numbers, and so forth, they all say Indian land. That is how they are described.

Mr. TAYLOR. Well, I think the question or the point I am driving at—let's take Jackie Kennedy's estate. The estate has come up two or three times today. She owns a title from the State of Massachusetts, or at least the county that has jurisdiction in the Gay Head area. What I am trying to get at is, what are we looking at here as an alternative to what is before us? Are you saying that Jackie Kennedy's estate, as well as all other properties that are within this 3,400 acres, the title has currently been issued to by the State of Massachusetts, that that land should be taken from the current owenrs and returned to the tribe? Is that what you are recommending?

Mr. JAMES. No.

Mrs. IGNACIO. No; I have never said that.

Mr. JAMES. I believe it was brought out before, when someone mentioned that it could be put into a Federal trust, like the National Seashore on Cape Cod, where these people would be allowed to stay there, and they could will the house to their future generations, and if they decided to sell it, the tribe would get first refusal. I think that was brought out before.

Mr. TAYLOR. Right, Let me ask another question. Are there lands within the 3,400 acres there that are currently available? We are talking here about common lands. We have got the Strock estate. We have the Cook property, and we have one other——

Mrs. IGNACIO. There are town lands that taxes are not being paid on, the owners are no longer living—I feel those lands should be returned to the tribe.

Mr. **Taylor**. Do you have any estimate of the number of either lots or acreage?

Mrs. **Ignacio**. No; I don't. No.

Mr. **Taylor**. Go ahead. I am sorry.

Mr. **James**. OK. I think it was mentioned before that a group of four attorneys, I guess, stand to gain substantially if this settlement goes through.

I would also like to state that the State corporation does not represent me in any way in this action. I withdrew when I realized they were operating in a way that was not for the overall good of my people. And since I withdrew, I have not been notified of any of their meetings, nor have I received any statements, notices, et cetera.

Although I withdrew from the proposal, I am still a member of the Gay Head Wampanoag Tribe.

In closing, I would like to ask the members of the committee to realize that the Gay Head Indian people will not benefit in any way if this bill is passed. By your recommendation that the bill not be passed, you will ensure that the Indians of Gay Head will be able to enjoy all that is theirs by birthright, all that is ours by being born a Gay Head Wampanoag. Thank you.

[Prepared statement of Mr. Roland James appears in the appendix.]

Mr. **Taylor**. Thank you, Mr. James.

Would you state your name again for the record?

STATEMENT OF ROSALIE FRANCIS

Mrs. **Francis**. Mr. Chairman, and members of the committee, my name is Rosalie Francis.

I was born and raised in Gay Head. My father was a fisherman. There were eight children in our family. Today, only one member of my family has a home in Gay Head. That is built on his wife's land.

My daughter, Shirley Jardin, has tried repeatedly to get back land the town took from us, the reason being that my grandfather, in 1929, was too ill to care for himself. The town put him a State hospital in Tewksbury, where he died after 11 months.

Everyone on Gay Head knew he was too sick to sign a deed. The town won't lift a finger to help us. Another complaint against the tribal council is, when they received a huge grant from the Federal Government, which involves my nephew, Emay Francis, they solicited him and persuaded him to go to a hospital for help and took him there and signed for his treatment. Now the refuse to pay the bill. I have enclosed a copy.

Signing this land bill now would be devasting to me and my family.

Now, this is one that was returned. It is from Terry Watkin, in Hyannis, the doctor. It says:

> Dear Mr. Francis, we were in contact with the Wampanoag Indian Council and they feel they are not responsible for your bill. You will have to resolve this with them as we are not responsible for these kinds of matters. Sincerely, Lannie Smith.

Thank you.

Mr. **Taylor**. Fine. Thank you.

The statement, other than the letter you just read, could we have that statement for the record? I think it would help the reporter.

Mrs. **Francis**. This last one? The one I just read?

Mr. **Taylor**. Not the one about the bill. The handwrittern statement.

Mrs. **Francis**. Yes; sure.

Mr. **Taylor**. I think it will help the court reporter.

[Prepared statement of Mrs. Francis appears in the appendix.]

STATEMENT OF HELEN VANDERHOOP MANNING, GAY HEAD INDIAN PUBLIC SCHOOL TEACHER (RETIRED)

Ms. **Manning**. I know you have my letter, and in the letter I have listed the 14 points which give my reasons and this group's reasons that we did not like the settlement for those 14 things.

One of the things that has not been mentioned, however—oh, I also want to say that Joan and I took this before the tribal council and read them and gave our objections and asked them to consider them. They just simply gave us token silence and just right away voted no. They would not even consider them.

But be that as it may, also the one—I am a retired school teacher, and I taught in the Gay Head public schools—Indian public school—for 12 years, and now I am interested in the history and the culture of Gay Head and Martha's Vineyard, and I am finding that in doing all of this history which I hope will lead to a tribal history, the landmarks are one of the things that are very, very important to the tribal history of the Gay Head Indian, and those landmarks are listed here that are now on private property, but which we would like to have, not taken away from private property, but have access to them my members of the tribe.

And everything that has been said here today is certainly, during this last few minutes I should say, or the last few hours or so, has said exactly what I would have said and the way I feel about it.

I also object to the settlement because it just is not enough. It does not give us enough.

Mr. **Taylor**. Ms. Manning, I also have got a piece of paper that Joan Patadal gave us last night, and the title is "Fundamental Demands Essential To Preserve and Maintain Wampanoag Indians of Gay Head Heritage and Tradition."

Are those the same 14 points?

Ms. **Manning**. Yes; they are.

Mr. **Taylor**. And you say those were taken to the tribal council——

Ms. **Manning**. Joan and I went there. Yes, we presented them to the tribal council for consideration.

Mr. **Taylor**. And when?

Ms. **Manning**. October 1983.

Mr. **Taylor**. Fine. OK. Well, that will be made a part of the record.

[Prepared statement of Ms. Manning appears in the appendix.]

Mr. **Taylor**. I appreciate all of your testimony, and we will try to get to our last group here.

James Faction?

Oh, pardon me, I thought we were dealing with a—OK, there's a Mr. Sapio that wanted to testify, too. Why don't you come up. Is Mr. Sapio here?

This will be the end of the witnesses we have on the witness list. Now, is there anyone here expecting to testify that we have not called on?

[No response.]

Very good.

Joan, do you want to coordinate this?

Ms. **Patadal**. Yes.

STATEMENT OF JOAN PATADAL, MEMBER OF THE WAMPANOAG TRIBE

My name is Joan Patadal. I am a Gay Head Wampanoag. I live in Gay Head, MA. This is Barbara Gentry. She is my sister and currently is not living on Gay Head. She lives in Laramie, WY. She works for the University of Wyoming. She is director of the Indian program there.

And this is Beatrice Gentry. She is my mother. She was the first chairperson of the Gay Head Wampanoag Tribal Council, and this is Sammy Sapio, a Penobscot from Maine, who joined us here at his own expense.

And we are here at our own expense.

Ms. **Boylan**. Do you want to identify your daughter, Joan?

Ms. **Patadal**. And this is my daughter—I am sorry, Virginia—this is my daughter, Beatrice, and she is in the fourth grade, and she is to make a report on this hearing because she missed school all week.

I have been here all afternoon, and I will be very brief, and I appreciate the time. First of all, I just want to say just a couple of things, and I will let everyone get on.

It saddens me to come here and testify in opposition to other Indian people. I think that this is the real tragedy of this legislation, that it is a little premature, it is a little rushing—it is just a little premature.

I think that communications, if they had been better on all sides, not just the Tribal Council, Inc., with us, and also the Tribal Council, Inc., and the town of Gay Head, and the Taxpayers Association—I mean, this would have been avoided. It could have been avoided a long time ago, and so I understand that the Taxpayers Association have spent 10 years—they are talking 10 years as length of time. Well, you must understand that the Taxpayers Association is not familiar with Indian affairs, and they are not familiar with the land claims in other parts of the United States, and how many years; and so 10 years, I am sure, to your knowledge of Indian affairs, this does not mean a whole lot as far as time goes.

To me, as I am 35, 10 years does not seem to mean a lot of time to me, either, because if someone says, where are you going to be in 20 years—home is RFD, 159 State Road, Gay Head—I will be there in 20 years, and I think that the idea of hardships that the Taxpayers Association talks about, I understand it is a hardship; you know, this is their second home; they came to Gay Head for a summer home, and they wanted to keep everything pretty, and, of course, the problem we have is that we never messed up the whole island to begin with; we kept it pretty, and it will always stay pretty, as far as I am concerned, if you let us control our own lives.

And if we have control of those lands which we have to have to ensure their protection and our future existence as Indian people, when we will always be happy on Gay Head, and we have never ever sought to disenfranchise anybody. The land case was simply over three small areas of Gay Head.

We did not sue for the whole town of Gay Head in the beginning. We discussed it. We discussed it with Mr. Tureen. Mr. Sockbeson was not involved at that point. This is 1974, and we talked with Mr. Tureen about what our possibilities were as far as suing. Shall we sue for the whole island? Shall we sue for certain areas of the island? Because, after all, everybody knows that Gay Head had four areas of Indian lands on it in 1870.

Gay Head was the State reservation. There was an area in Christiantown, at West Tisbury, which is called Christiantown, because we are all good Christians there, and in Edgartown; there were two areas: Chappaquiddick and Deep Bottom.

So, in 1970, on Martha's Vineyard, there was only one area left of Indian population, and that was in the town of Gay Head, because the other areas had become incorporated into the other towns and had been sold off, and whatever.

So, when Mr. Madison, who is the tribal medicine man, set up a town meeting last year, and talked concerning this land settlement case, of why we should accept it, what its benefits were to us as Indians and the benefits to the Town of Gay Head, his statement was, let's be a good American and vote for the settlement.

Well, I tell you, Mr. Madison, I know he knows if you go by the front door of the town hall of Gay Head, there is a little plaque there on a rock where Gay Head gave in World War I the most men per capita of any town in Massachusetts; so, believe me, we have been good Americans for World War I; we have been good Americans in the Civil War, and we were good Americans in the American Revolution; and when King Phillip's war came on, the Gay Head Wampanoags did not join, OK, with the Wampanoag confederacy at that point. King Phillip's war, in 1676 to 1678, which brought out the wholesale annihilation of the Wampanoags in Massachusetts was fought mostly on the mainland and at that point when the Wampanoags were defeated with the Narragansetts in Rhode Island, our brothers.

Then we were sold into slavery, those that were not killed, and, of course, we believe that as the boat rounded to Gay Head, the ship captain took pity on the poor families and let a few of them off to swim ashore to us in Gay Head. I like to believe that story.

So, I am really tired of hearing about being a good citizen and a good American, and let's take the settlement and that is all that we are going to get. And so I just wanted to say a few brief things, and the only thing I wanted to say was: Mr. Madison, Jeffrey, who is chairman of the board of the selectmen, who did not seem to know much about the fishing project, he was assistant to the director of the aquiculture project. He used to run one of the boats, and he was the No. 2 guy. There was a director who was the marine biologist, and so Mr. Madison has full knowledge of it.

He may not want to talk about it, but he knows of it.

Also, Mr. Vanderhoop, David Vanderhoop, was a student at the Laramie School of Aquiculture in Bellingham, WA. I believe he has a degree from there—I am not too sure—but he can talk about aquiculture and development in Gay Head.

Now, I think that all of this talk about development and the reason why these lands have to have settlement and some have to have trust status, and some of them won't have trust status, I am telling you, if they are not protected, all of them that we get, I don't care what you are talking about—I don't care whether you are talking about beaches or whatever—if there is not protection for them, they will be gone, because I have a wonderful paper that you and I looked at, you know, and this is the history of the fishing project on Gay Head, and what is there after the blood death and a few little old buildings, and God only knows what the vote is; so I would like to now give my time to these other people.

Mr. **TAYLOR**. Thank you, Joan.

STATEMENT OF BEATRICE GENTRY, FIRST CHAIRPERSON OF THE GAY HEAD WAMPANOAG TRIBAL COUNCIL

Mrs. **BEATRICE GENTRY**. I am Beatrice Gentry, Joan's mother, and I was the first president of the tribal council of Gay Head. The tribal council really originated because there were many organizations on the island who were looking at our common lands. One of them was the conservation commission. They wanted to take those 238 acres of virgin soil and put it into conservation.

So, a group of people, Thelma Weissberg was one of them, got together and said we must organize to save these, and we must organize a tribal council to keep these lands for the people because, on record, and it is in this book that Joan is going to give you, it shows the people who did not want to become a town.

So we organized the tribal council just to save those lands. When we made the charter, Gladys Widdiss sat there today and said that we did not want Federal recognition. One of the objectives in our charter, which you will have, says definitely that we wanted Federal recognition, and we must have land for a land base before we could have it. So that is a statement which is not—I wanted to correct.

And Helen Manning, and Joan, too, are going to give you the 14 reasons that Jeffrey Madison said that he does not know why we disagree with this land settlement.

Now, I think I told you when I talked to you yesterday, I urge everyone to vote against the passage of S. 1452 because I do not see how we can say you are going to give us something that is going to be under Federal trustship. I want to have Federal trustship before you give us the land.

And that is all I have to say.

Mr. **TAYLOR**. Thank you very much. By the way, the 14 points that you gave me I realize are in Helen Manning's testimony, but I would like also to make those a part of the record at this point as pertaining to the testimony of Joan Patadal.

[Prepared statement containing the 14 points appears in the appendix.]

Mr. **Taylor**. We will have to make this pretty short, and we want to get to the rest of the panel.

STATEMENT OF BARBARA GENTRY, DIRECTOR OF INDIAN EDUCATION PROGRAM, UNIVERSITY OF WYOMING

Ms. **Barbara Gentry**. First of all, my name is Barbara Gentry, and I am currently working at the University of Wyoming. I am a director of their Indian Education Program. I have a bachelor's in social work from Utah State University, and also a master's from the University of Wyoming.

If you are wondering why they are western universities, it is because 20 years ago there were no Indians going to school on the east coast, so I opted to go to a school where there were Indian people, and it made a big difference in my life.

I have worked on the Ute Reservation, Northern Ute Reservation, for approximately 2 years. I have worked with the Arapaho and Shoshone Tribes. This is my second time with them at the University of Wyoming. I am putting this into the record because I think it is important that you see our involvement, not only with our own Wampanoag Tribe and people, but also with other Indian nations across the United States.

They say we are just a small group of dissenters. This is not true. Half of the tribe is against us. We have come here today on our own money, and it is costing us money, and some of us really cannot afford it, but I think that we are putting the future of our tribe before ourselves, and we are not trying to hurt the Wampanoag Tribal Council of Gay Head.

By the way, I am not a member. I withdrew when I found out about the letter between the two lawyers, Tom Tureeen and the town lawyer, when Tom said that the Wampanoag Tribal Council was not the governing body of the tribe.

At that point, I said, well, what kind of organization is it? Also, on the membership, that question has come up three times, and I would like my mother to respond to that because during the membership—I attended two meetings; I have not lived at home all of this time; I have been out working, and, unfortunately, there is no way for me to work on the island with Indian people. There are not jobs to do that; the closest place is the Boston Indian Council, where I worked for 5 years as the education director, and we had programs there from day care to adult education. We serviced over 200 people a day—200 Indian people a day. Could you talk about that?

Mr. **Taylor**. Well, what I am interested in is the question about the membership, and then I want to hear from Mr. Sapio.

Mrs. **Beatrice Gentry**. We started the tribal council by going by the roll of 1870, just as they are doing at the present time, but we said, in order to be given tribal benefits, in order for you to be able to send your child to school, for instance, and get money, tribal money, then you could marry away three times from the roll, which would make about one-eighth, the quantum would be about one-eighth.

Now, I can tell you that the roll was made up——

Mr. **Taylor**. That would be three generations from the——

Mrs. **Beatrice Genrty**. That's right, and that roll was left in 1970, when I left the—1976, I mean—when I left as president. It was left in the tribal council office, and, Helen, were you on that committee? I don't know whether any are on that committee here today, but we had a committee that worked on that for 2 years. We connected all the people from the 1870 roll that we could find, to see, you know, who was eligible, and they made up a roll. Now, I don't know where the roll is, or what happended to it, but it was for tribal benefits.

Now, we are not saying that they were not descendants of Gay Head Indians. We were saying in order to get tribal benefits, they could not have married away over that many times, and I know that is the Federal guideline, because when I went into the Indian service, I was given preference.

Ms. **Barbara Gentry**. I just have one more thing to say, and it was a question that came up on membership, and if they are going to claim every descendant, why did they not advertise like the Alaskan Native Land Settlement did for their members, and also various tribes in Oklahoma have also advertised for its tribal members across the United States.

Now, I have seen those in a Chicago paper years ago. It is a common practice done with many land settlement cases before they close the rolls to identify all of its members. This was not done in Gay Head, and it was brought up that if you are going to claim in any one of the tribal council meetings, it was asked that this be done. And it was never done.

Mr. **Taylor**. Fine. Thank you.

Mr. Sapio. Last, but I hope not least.

STATEMENT OF JOHN SAMMY SAPIO, MEMBER OF THE PENOBSCOT NATION

Mr. **Sapio**. Well, I am always last, anyway, because this is their problem. They have asked me to come down to speak about it because I have been through this whole situation. I can understand what they are going through and what is happening to them.

Mr. **Taylor**. You are a member of the Penobscot Tribe?

Mr. **Sapio**. I am a member of the Penobscot Nation. Henry Sockbeson is a member, too, but I have never seen him around the reservation.

I wish he would come back and work for us up there, so we would not have to keep running down to Portland and talk to Tom Tureen. He could work around our reservation with the Indian people.

What I would like to say: I am here to talk against this bill, 1452.

Ladies and gentlemen, and members of the committee, my name is Ganutch. My English name is John Sammy Sapio, a Penobscot community name. It used to be the Penobscot Nation, but they have changed it around, and we come under the community bit because of the land claim thing, but they still call it the Penobscot Nation, just to keep the people happy.

But since the land claim, it has changed. Big money deals—wells, one of the things I am trying to say, I am kind of confused here—but I am here to oppose the land claim settlement for the Gay

Head Wampanoags as it will not benefit the individual members of the tribe.

There is nothing in the settlement. It's a total sellout of the birthright of the Indian people of Gay Head. It is like building a social welfare nation like the settlement in Maine, as was described in an article in the Bangor Daily News by one of our tribal people.

You will hear a lot of testimony here today for the settlement which will probably be passed. This group has money. Why I am saying money is because the people that come in and testify belong to organizations that have money from the Federal Government, like USET, BIA, and all of these.

We people, we have to spend our own money to get, you know, to get here and to go back, so that is kind of a discrimination thing. I think all people should be heard on both sides, not just one side. The one side gets paid; the other side doesn't get paid, so they have to use their own money.

Any everybody, I think, today here works to earn a living, and they cannot afford it. But with the great spirit, the Creator, he helps us along so that we can get to these places where we are suppored to be.

That money that they spend is supposed to go to Indian people on reservations, you know, for jobs, welfare, education, and, as I said before, these people have to use their own money, and the people that have the government money, you know, can use that money to pay their way down.

Indian people—I am just skipping around here—so, we have a lot of problems in Maine now because of the nuclear waste dump. They want to put a nuclear waste dump on the land, and the people that are for this land claim, for the money part of it, which comes to 300,000 acres that we had to buy, was our own documentative land that we knew, you know, where it was. The three townships that we lost, the trust money that we had, the Indian people had got from the changeover from Massachusetts to Maine, that is all gone. So now we have another trust fund. I don't know how long that is going to last because it seems we are getting into a big deficit here, where we are almost as bad as Reagan. We are losing all our money one way or the other.

The ones that talk of this land claim are for it. They talk about how their land is so sacred to them, and they will fight for it. I guess they forgot their ways. It is like committing the worst sin in the white man's religion, a mortal sin.

By talking on both sides of their mouth, what I call jumping the fence, or an apple Indian, red on the outside, white on the inside, I like to end by, you know, saying to the Indians of the Piute Nation, who are stronger than any Indians—they turned down their settlement. They had a settlement and they turned it down because it was not going to benefit the individual people out there in Tacoma, WA.

And what I would like to say is, you know, they are following in the footsteps of their ancestors who left us this land to protect and preserve for generations to come. I would like to say that they probably had NARF, Native American Rights Fund, represent them, and that is why they turned it down.

Mr. Taylor. I think we are going to have to bring this hearing to a close.

I would like to thank all of you for your testimony, and I would simply like to observe for the record that we have three generations of family here, Joan Gentry, Joan Patadal, and Beatrice, who is going back to write a report about what she has seen here, and we will probably hear from your fourth grade teacher.

The hearing will stand adjourned.

[Whereupon, at 6 p.m., the hearing was adjourned, to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

STATEMENT OF HAZEL ELBERT, DEPUTY TO THE ASSISTANT SECRETARY - INDIAN AFFAIRS (TRIBAL SERVICES), DEPARTMENT OF THE INTERIOR, BEFORE THE APRIL 9, 1986, HEARING OF THE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON S. 1452, THE "GAY HEAD WAMPANOAG INDIAN CLAIMS SETTLEMENT ACT OF 1985."

Mr. Chairman and members of the Committee, I am pleased to present the views of the Department of the Interior on S. 1452, the "Gay Head Wampanoag Indian Claims Settlement Act of 1985".

I will not repeat all the information and discussion that is included in our February 5, 1986, report to the Committee on S. 1452, but I have attached a copy of the report to my statement. As stated in that report we oppose enactment of S. 1452 because it does not meet the criteria for the settlement of eastern Indian land claims as set forth in the President's veto message on another eastern land claims bill during the 98th Congress. These criteria are (1) completion by this Department of its administrative procedure for determining whether Federal recognition of the tribe is appropriate; (2) verification of the claim, and (3) payment by the State of Massachusetts of at least one-half of the settlement costs.

S. 1452 would settle outstanding Indian land claims in the Town of Gay Head, Massachusetts. The settlement would terminate a Non-Intercourse Act claim that has been pending before the U.S. District Court for the District of Massachusetts since 1974. The lawsuit involves a claim to approximately 240 acres of land presently held by the Town of Gay Head as town common lands. The claims have also resulted in the clouding of titles to certain private lands in the Town of Gay Head, even though many of these lands are not involved in the lawsuit. As part of the settlement in S. 1452, an appropriation of $3,000,000 is authorized.

plaintiff must show that:

- * It is or represents an Indian tribe within the meaning of the Act;
- * The parcels claimed are tribal land;
- * The United States did not consent to the alienation of the land; and
- * The trust relationship between the tribe and the United States has never been terminated or abandoned.

Since the United States has had little or no involvement with the Gay Head Indians and has never formally acknowledged that a tribe even exists, it has never been in a position from which it could consent to any alienation of their lands or a termination of the trust relationship. Thus, the only two issues of significance in this matter are whether there is a tribal group capable of bringing a claim, and whether the lands at issue are covered by the Non-Intercourse Act.

As I indicated, there is currently no Gay Head or Wampanoag Tribe acknowledged as existing by the Federal Government. Section 8 of S. 1452 specifically preserves the right of the Indian entity at Gay Head to petition for Federal recognition. A group representing itself as the "Gay Head Wampanoag Tribe" did file a petition for acknowledgement pursuant to 25 Code of Federal Regulations, Part 83, in 1981. We anticipate that a recommendation concerning the group's eligibility for Federal status will be available by June 1986. We believe that processing of the recognition petition filed by the Gay Head Indians should be completed before any legislative settlement is considered.

We acknowledge that there is limited precedent in the Rhode Island Indian Claims Settlement Act for settling a claim prior to acknowledgement of a tribe. However, we believe this precedent should not be followed in this or other future Non-Intercourse Act settlements because it is our view that the determination of tribal existence is a fundamental threshold issue in making such a claim. Without tribal status, a claim is not valid. If there is no tribe, there can be no claim. Thus, if Congress were to settle this claim and the group were subsequently found not to be a tribe, Congress will have legislatively settled a claim lacking merit.

If the bill were to be amended to make implementation of the settlement contingent upon Federal acknowledgement of the Gay Head Wampanoag Tribe by the Department, our concerns about the existence of the tribe would be alleviated. However, that amendment would not address the inadequacy of the State contribution to the proposed settlement.

We believe State participation called for in S. 1452 is inadequate. Other than the agreement to allow the town to reconvey the Town common lands back to the tribe, we see no contribution from the State in the settlement bill. Inasmuch as the town common lands, if transferred to the tribe, will be subject to severe land use restrictions and will except for a nominal change in record ownership, maintain the current status of the land in most respects, we view the State's contribution as largely illusory. However, we understand that in addition the State legislature may appropriate $1.5 million for the settlement which would be half of the $3 million called for in section 3(b) of the bill.

Finally, we believe that the circumstances of the alleged taking and the applicability of the Non-Intercourse Act should be examined with care to establish the validity of the claim or sharply reduce the uncertainties. The attached report summarizes the information we have on the circumstances of this unusual case. While the resolution of unresolved legal questions through a legislative settlement may properly be the subject of Congressional action, the unresolved issues regarding tribal existence and the State's inadequate contribution force us to recommend against enactment of this bill.

This concludes my prepared statement. I will be happy to answer any questions you and the Committee may have.

United States Department of the Interior
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

FEB -5 1986

Honorable Mark Andrews
Chairman, Select Committee
on Indian Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This responds to your request for our views on S. 1452, a bill "To settle Indian land claims in the Town of Gay Head, Massachusetts, and for other purposes."

We oppose enactment of S. 1452 because it does not meet the criteria for the settlement of Eastern Indian land claims as set forth in the President's veto message on S. 366, 98th Congress, a bill "To settle claims of the Mashantucket Band of the Western Pequot Indian Tribe, and for other purposes." These criteria are (1) completion by this Department of its administrative procedure for determining whether Federal recognition of the tribe is appropriate; (2) verification of the claim; and (3) payment by the State of Massachusetts of at least one-half of the settlement costs.

S. 1452 would settle outstanding Indian land claims in the Town of Gay Head, Massachusetts. The settlement would terminate a Non-Intercourse Act claim that has been pending before the U.S. District Court for the District of Massachusetts since 1974. See Wampanoag Tribal Council of Gay Head v. Town of Gay Head, Civil No. 74-5826 (D. Mass). This suit involves a claim to approximately 240 acres of land presently held by the Town of Gay Head as town common lands. The Indian claims at issue in Wampanoag Tribal Council have also resulted in the clouding of titles to certain private lands in the Town of Gay Head, even though many of these lands are not involved in the pending lawsuit.

S. 1452 would establish a $3 million "Gay Head Indian Claims Settlement Fund" funded by Federal appropriations which would permit the Wampanoag Group of Gay Head Indians to acquire at fair market value some 175 acres of private settlement lands. In addition, S. 1452 would authorize use of fund monies to survey and improve both private and public settlement lands. These acquired private lands would be transferred to the Wampanoag Tribal Council, Inc., a corporation chartered under Massachusetts State law. The Secretary of the Interior (Secretary) would have the authority to begin such condemnation proceedings as were necessary to perfect any right, title or interest in the private settlement lands. So-called "public settlement lands" are to be conveyed under S. 1452 by the Town of Gay Head to the Wampanoag Tribal Council.

S. 1452 would also require the Secretary to publish in the Federal Register his findings as to whether the State of Massachusetts has satisfied certain conditions with respect to the transfer of public settlement lands to the tribal council. Satisfaction of these conditions would be a prerequisite to secretarial purchase of private settlement lands.

Any transfer of land or natural resources involving the Wampanoag group of Gay Head Indians or individual Indians within the Town of Gay Head and the town itself which is completed prior to the effective date of S. 1452 would be deemed to have been made in accordance with the Constitution and laws of the United States. In addition, the bill would extinguish any aboriginal title or other related claims based upon the taking of aboriginal lands from the Gay Head Indians. However, the personal claims of individual Indians would be preserved.

The lands in question under this bill are part of a larger tract on which Indians have resided since before the arrival of European settlers in the early 17th century. In 1683, an agreement was negotiated between the Indians and settlers in the area which provided for the extinguishment of the aboriginal Indian title at Gay Head. While there is some question as to whether this agreement was procured in a fraudulent manner, it is our understanding that the transaction is not now being challenged. In the early 1700's, a religious aid society (the "Company") purchased certain other land at Gay Head on which Indians continued to live throughout the 1700's. The underlying fee title to these lands was retained by the Company. It is the position of the plaintiffs in Wampanoag Tribal Council that when the Company abandoned these lands during the Revolutionary War, their ancestors acquired title. By contrast, the defendants argue that the lands escheated to the Colony and subsequently to the State upon abandonment by the Company. There appears to have been about 2,400 acres in Indian possession at the end of the 1700's. Throughout the 19th century, Indians continued to live on the property, and because of their relative isolation, were left largely to govern and regulate their own affairs.

After the Civil War, however, many members of the Massachusetts Legislature expressed concern with the lack of civil rights accorded to the State's Indian residents. Indians at the time suffered under two major disabilities: they were not citizens of the State and therefore could not vote, and they could not own land. To remedy this problem, a bill entitled "An Act to Enfranchise the Indians of the Commonwealth", was introduced and became law in 1869. Among other things, the Act granted citizenship to all Massachusetts Indians, and guaranteed title to parcels of land claimed by individual Indians. In 1870, the legislature transferred all "common lands" (approximately 240 acres), "common funds, and all fishing and other rights held by the district of Gay Head to the Town of Gay Head. . . ." It is these transactions; i.e., the vesting of title in individual Indians and the transfer of the remaining common lands to the town, that the plaintiffs claim in Wampanoag Tribal Council violated the provisions of the Non-Intercourse Act.

To establish a prima facie case under the Non-Intercourse Act, a plaintiff must show that:

- It is or represents an Indian tribe within the meaning of the Act;
- The parcels claimed are tribal land;
- The United States did not consent to the alienation of the land; and
- The trust relationship between the tribe and the United States has never been terminated or abandoned.

Since the United States has had little or no involvement with the Gay Head Indians and has never formally acknowledged that a tribe even exists, it has never been in a position from which it could consent to any alienation of their lands or a termination of the trust relationship. Thus, the only two issues of significance in this matter are whether there is a tribal group capable of bringing a claim, and whether the lands at issue are covered by the Non-Intercourse Act. As noted previously, these issues and the adequacy of the State's contribution, are criteria that must be addressed before the Administration can support a settlement.

There is currently no Gay Head or Wampanoag Tribe acknowledged as existing by the Federal Government. Section 8 of S. 1452 specifically preserves the right of the Indian entity at Gay Head to petition for Federal recognition. A group representing itself as the "Gay Head Wampanoag Tribe" did file a petition for acknowledgement pursuant to 25 Code of Federal Regulations (CFR) 83 in 1981. We anticipate that a recommendation concerning the group's eligibility for Federal status will be available by Spring 1986. We believe that processing of the recognition petition filed by the Gay Head Indians should be completed before any legislative settlement is considered.

We acknowledge that there is limited precedent in the Rhode Island Indian Claims Settlement Act (25 U.S.C. 1901 et seq.) for settling a claim prior to acknowledgement of a tribe. However, we believe this precedent should not be followed in this or other future Non-Intercourse Act settlements because of our view that the determination of tribal existence is a fundamental threshold issue in making such a claim. Without tribal status, a claim is not valid. If there is no tribe, there can be no claim. Thus, if Congress were to settle this claim and the group were subsequently found not to be a tribe, Congress will have legislatively settled a claim lacking merit.

If the bill were to be amended to make implementation of the settlement contingent upon Federal acknowledgement of the Gay Head Wampanoag Tribe, our concerns about the existence of the tribe would be alleviated. However, that amendment would not address the inadequacy of the State contribution to the proposed settlement.

To sustain a Non-Intercourse Act claim, the land alleged to have been alienated must have been subject to the Act; i.e., it must have been tribally-held land. It is not clear that all of the lands subject to "extinguishment of title" by the settlement bill were held in a communal and tribal fashion at the time of the formation of the United States or the passage of the first Non-Intercourse Act in 1790.

The tribe's claim does not appear to be based on the continued existence of aboriginal title, that title having apparently been extinguished in the late 17th century. Rather, the claim is based on property interests the tribe allegedly acquired as a result of the purchase of land for the tribe's use by the Company in the early 1700's and/or subsequent abandonment of the property by the Company during the Revolutionary War. The defendants in Wampanoag Tribal Council assert that these are not "tribal" lands for purposes of application of the Non-Intercourse Act, but were merely lands subject to State law. While the petitioning group in Wampanoag Tribal Council has not specifically claimed those lands held by individual Indians in 1869 (at least 1,700 acres), a competing Indian group known as the "James faction" has done so, and this raises a question posed by the First Circuit in James v. Watt, 716 F.2d 71 (1st Cir., 1983). The First Circuit reasoned that if individual rights attached to the land prior to 1869, then the State's action in 1869 vesting individual Indians with title was not a taking of interests in land, but was a conveyance of the State's interests to those Indians. If this hypothesis is accurate, any tribal claim to those lands would be foreclosed.

On the other hand, if the lands were in fact held as "tribal" lands at any point after enactment of the first Non-Intercourse Act in 1790 (and we are not aware of any transaction by which any tribe reacquired these lands), tribal title could not be divested by the State assignments to individual members. Thus, subsequent sales by individual Indians to non-Indians would also have been invalid.

This claim is also questionable in that there was no dispossession of the Indians by the alleged taking through the 1869 and 1870 State laws. The lands were merely transferred to individual Indians or to the Town of Gay Head. Assuming that the tribe exists, and that it owned an interest in the lands transferred to the town by the 1870 legislation, it can be argued that no real injury has occurred. In its acknowledgement petition, the tribe argues that it and the town are the same entity. Since the town common lands are still owned by the town/tribe the claim in Wampanoag Tribal Council could be extinguished merely by changing the paper title to the land. The transfer of the 240 acres of town land (i.e. the so-called public settlement lands) back to the tribe is controversial only from a land-use standpoint. Disposition of such public settlement lands is an issue that can be resolved by the State without congressional attention. It is in fact these lands that apparently represent the State's contribution to the settlement.

We believe State participation in the proposed settlement is inadequate. Other than the agreement to allow the town to reconvey the town common lands back to the tribe, we see no contribution from the State in the settlement bill. Inasmuch as the town common lands, if transferred to the tribe, will be subject to severe land use restrictions and will, save for a nominal change in record ownership, maintain the current status of the land in most respects, we view the State's contribution as largely illusory.

In summary, this is an unusual claim. The impetus for the settlement seems to be at least partially motivated by the change in demographics at Gay Head after World War II. Since 1870 the tribe has remained in control of the town, its affairs, and its land. This domination of the town is now threatened by the prospect that non-Indians who have moved into Gay Head as permanent residents could someday obtain control of the town government. While the resolution of unresolved legal questions through a legislative settlement ratifying an agreement between parties to a Non-Intercourse Act suit may properly be the subject of congressional action, the as yet unresolved issue regarding tribal existence and the State's inadequate contribution mitigate against passage of this legislation.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely,

Ross O. Swimmer

ASSISTANT SECRETARY Ross O. Swimmer

PREPARED STATEMENT OF GLADYS A. WIDDISS

Good morning Mr. Chairman, my name is Gladys Widdiss, President of the Wampanoag Tribal Council of Gay Head, Inc. I am a member of the Gay Head Wampanoag Tribe and a resident of the town of Gay Head.

I have come here today to voice the support of the Wampanoag Tribal Council of Gay Head, Inc., the traditional leadership of the Tribe, and my own personal support for S. 1452.

This legislation proposed is the result of over ten years of litigation and seven years of negotiation by the Gay Head Tribe. When the Tribe initially considered the land claim there were three primary objectives considered as vitally important.

The first objective was control and preservation of Tribal common lands. These common lands included the colorful Gay Head Cliffs, the herring creek, and the cranberry bogs and dunes. These areas are of cultural and historical significance to our Tribe. Traditionally our people held ceremonies, gathered food, and made a modest living from these lands.

Secondly, the Tribe needed to provide a land base so that Tribal members would have the opportunity to continue to live in the Gay Head community . Since the early 1960's land values have increased dramatically, making it difficult for members of the Tribe to make a living and maintain or build homes on Gay Head. This, coupled with a limited, seasonal economy forced Tribal members to leave the community to live and find work. Our people were being forced to leave Gay Head and the Tribe was in danger of being destroyed by the forces of the marketplace.

Thirdly, as a non-federally recognized Tribe, we felt that we needed to clarify our relationship with the federal government and to actively seek federal recognition. The benefits and services available to federally recognized Tribes would dramatically increase the chances for the Gay Head Wampanoags to maintain the Indian community and provide a measure of self-sufficiency for the Tribe. This relationship, with a viable land base, would provide for insuring that Gay Head would continue as an Indian community.

As a first step in obtaining these objectives, the Wampanoag Tribal Council of Gay Head, Inc. was formed by the Indian people of Gay Head in November of 1972. I was one of the original directors of the Corporation. Because the Tribe was not federally recognized the Gay Head Wampanoags needed an "official" agency to represent Tribal members in achieving their goals. Since its incorporation the Tribal Council has served as the administrative and elected governing body of the Tribe.

Since establishing the corporation we have consistently attempted to contact and include all eligible members of the Tribe.

I have submitted for the record examples of mailings sent to Tribal members which show our efforts to include those who may not have been enrolled. (See Exhibit A.) These mailings, along with constant personal reminders to members to insure their families were represented, resulted in the Tribal membership being increased substantially. Currently the Tribal Roll numbers 495 Gay Head Wampanoags, 360 of whom are voting members over 18 years of age.

In 1974 the Tribal Council initiated a land claim against the town of Gay Head seeking the return of approximately 230 acres of Tribal common lands. At the time the lawsuit was filed the Tribe was advised by our attorneys that if the suit for the common lands was successful there could be a similar claim for the entire town. We were further advised that the filing of the lawsuit would lead to settlement talks, which in fact occurred.

In 1976 the Tribe became dissatisfied with the leadership of the Wampanoag Tribal Council of Gay Head, Inc., including some of the original incorporators. With the majority of Tribal members supporting the notion of a negotiated settlement the then leadership, ignoring Tribal sentiment, insisted on pressing for litigation. This resulted in a change of Tribal Council administration in November of 1976 when regularly scheduled Tribal elections were held. Wenonah Silva replaced outgoing President Beatrice Gentry.

In the Spring of 1977 the formal process of negotiations began. At this point a group led by the former Tribal Council officers began active attempts to forestall any attempts at reaching an acceptable negotiated settlement. These "dissidents" attempted to influence Tribal members through participation in Tribal Council meetings and vocally opposing efforts for settlement. Their views remained in the minority.

The process of negotiations started in 1977 with an initial meeting of Tribal representatives, representatives of the Gay Head Taxpayers Association, and attorneys for the various parties. Subsequently, a format for negotiations was arrived at where formal negotiation committees of the parties were formed. The Tribe developed a representative committee drawn up along major family lines, including the dissident faction. In addition, members of the dissident group not on the committee attended the negotiating sessions and participated in discussions. Many meetings were held by the negotiating team, the sessions were long and difficult. The Tribe was kept informed through periodic discussions held at Tribal Council meetings and those meetings were spirited and informative.

In 1981 the basic principles of settlement were reached. These principles of settlement, containing essentially the same language as contained in S. 1452, represented basic points of agreement. The negotiating team felt it could go no further without having a

Tribal referendum concerning the acceptability of the proposed settlement. Because the proposed settlement met the basic objectives set by the Tribe the negotiating team felt it was appropriate for consideration by the full membership of the Tribe. An informational mailing was sent to all eligible members. Meetings were held to discuss the proposed settlement and members were given every opportunity to address questions concerning the settlement. Members of the dissident faction attended Tribal meetings and spoke in opposition to the settlement. Also, having been provided a mailing list by the Tribal Council, the dissidents initiated a letter writing campaign urging Tribal members to reject the proposed settlement. A vigorous telephone campaign, along with advertisements in local papers accompanied their efforts.

Ballots were sent to all eligible Tribal members in September of 1981. In spite of vigorous opposition the Tribe accepted the Principles of Settlement by a vote of 115 to 60.

In December of 1981 the dissident faction, having had their position rejected by the Tribe, filed a separate complaint as individuals in Federal District Court. This claim raised essentially the same issues as the Tribe's original complaint. The District Court held that individuals, as opposed to the Tribe, could not bring a claim under the 1790 Nonintercourse Act. This decision was subsequently upheld by the Court of Appeals, and the United States Supreme Court refused to review the decision further.

Following the Tribal vote the Gay Head Taxpayers Association attempted to negotiate further but were rebuffed by the Tribe. For the next two years the position of the Tribe remained essentially the same. Subsequently, the judge in Federal District Court put pressure on all parties to go to trial. This increased pressure on the parties to settle.

In August of 1983 a public meeting to discuss the stalled settlement and the dangers of going to trial was held in Gay Head. The town hall was packed with Indian and non-Indian residents and observers. Virtually every Gay Head Indian family was represented. The terms of the settlement were discussed and questions answered. Members of the dissident group attended and made their views known. Following this meeting representatives of the Tribe, town, and Gay Head Taxpayers Association got together to discuss the possibility of settlement. It was agreed that the 1981 agreement, with minor changes, would be presented for approval by all parties as a basis for a final settlement.

At the regularly scheduled October 8, 1983 Tribal Council meeting, Tribal members discussed voting procedures and timetable for consideration of the final settlement proposal. The consensus of the meeting was that a relatively short lead time was adequate as the settlement terms were generally well known and understood. On about October 12, 1983 360 ballots were sent to eligible Tribal members 18 years of age. In addition to the ballots were included copies of the setttlement terms and conditions, land use plan, and proposed state and federal legislation. Lastly, the Tribal leadership included a resolution urging Tribal members to vote on the settlement package. The Tribal Council did not attempt to influence the way Tribal members voted.

After the ballots were mailed out an informational meeting was held to answer any last minute questions concerning the proposed settlement. All Tribal members were notified that this meeting was to be held. Ballots were to be postmarked by October 26, 1983. On November 5, 1983 the ballots were opened and counted. Members of the dissident group were present and observed the opening and counting of ballots. No ballots were disputed by them.

The Tribe voted 164-29 to accept the final settlement package. It is important to note that the vote was an informed, public vote. Members of the Tribe had many opportunities to form and express their opinions regarding the settlement proposal.

Since the tribal endorcement of the settlement the dissidents have refused to accept the will of the majority. They have filed numerous actions in the state court system in an attempt to thwart this settlement. I will not attempt to outline the complicated nature of these proceedings, I will leave that to our attorney, but I can say that the tribe is currently under no judicial restraint whatsoever.

The dissidents have also met with the governor of Massachusetts to encourage him not to support the settlement. After careful review of their charges he found them to be unsubstantiated and has endorced the settlement to the extent that he has committed the state to supply one-half the cost of the settlement. He did this not based upon selfish state fiscal concerns but because he felt this to be the best result for all parties. The governor of Massachusetts has a long history of fair dealings with the Indian peoples of Massachusetts and his endorcement must be considered significant. Indeed, the dissidents themselves consider him fair and right thinking enough to approach him directly to ask that he oppose the settlement.

In addition to appealing directly to the governor and the state courts the dissidents have opposed state enabling legislation which is a prerequisite under S. 1452. They and their supporters appeared before the Joint Committee on Local Affairs which considered the state legislation. Despite their testimony and after careful consideration of the charges they made the state legislature overwhelmingly passed the state legislation called for in S. 1452.

In short, the dissidents have opposed this legislation at every level. They have filed state and federal judicial actions, all of which are unsuccessful. They have voiced their opposition to Governor Dukakis - to no avail. They have voiced their opposition at tribal, town and state legislative meetings and have had their position rejected at each. They make the same objections here today that have been carefully considered and rejected time and time again.

The dissidents state that they have attempted to withdraw from the tribal corporation but at no time have we received any signed notification from these individuals stating their desire to withdraw from the corporation. All we have received is a notice that attorney Hahn filed on behalf of 104 individuals, most of whom appear on our tribal roll, indicating that they have withdrawn. We have stated on record during the course of the state litigation that we have no objection to a withdrawal but that withdrawal a.) must be permanent; b.) must be signed by a member eighteen or older; and c.) must recognize that eligibility for future tribal benefits are waived. We have even provided the dissidents' attorney with a suggested form (see Exhibit B) but, again, no withdrawals have been received.

We are also aware that attorney Hahn has requested, supposedly on behalf of over half the trical membership, that the dissidents oppose the recognition petition which was filed by the tribal corporation on behalf of the tribe (see Exhibit C). The BIA responded by requesting that proof of Mr. Hahn's support be filed. The Bureau specifically requested individual signatures as proof of the extent of the dissidents' support. Despite the lapse of nine months no such proof has ever been filed.

Despite repeated challenges to produce actual proof of the level of opposition to this settlement none has been supplied. Frankly Mr. Chairman we who actually live on Gay Head and who will be most closely affected by this legislation see no deep or broad support for the dissident faction. We believe we have taken every reasonable step to demonstrate tribal support for this bill and urge your committee to disregard the unsubstantiated statements that the dissidents will make regarding the extent of their support.

We do, of course, realize the limitations of the settlement. For example, there is only limited provision for Tribal jurisdiction but traditionally the Gay Head Wampanoags control the town government and we believe that the settlement provides the opportunity for the Tribe to maintain that control. Also, there is currently no provision for federal recognition. The Gay Head Wampanoags have submitted documentation to support a petition for federal acknowledgment and we would expect that a positive preliminary determination will be issued prior to mark-up so that a recognition amendment can be added.

It must be kept in mind that the Gay Head Wampanoag Tribe, since 1870, has consistently elected Gay Head Indian people to town government positions. At present, all three selectmen, the town clerk, the tax collector, both constables, the chief of police, the shellfish warden, and assessors are all Gay Head Indians, and with few exceptions, have always been Indian. If this legislation is enacted the Tribe, with a land base and the opportunity to develop economically and socially, will continue its control of the leadership positions in the Gay Head community.

Lastly, Mr. Chairman we are aware of the growing concern in Congress regarding the issue of gaming on reservations. This bill would not permit such activity on Gay Head. Although the private settlement land will be taken into trust the tribe will not exercise the necessary civil regulatory control on those trust lands which the courts have deemed necessary. We recognize and accept that no gaming on our lands is now or will in the future be possible.

I urge the committee to favorably report S. 1452 out of committee.

WAMPANOAG TRIBAL COUNCIL
OF GAY HEAD, INC.
STATE ROAD, GAY HEAD, MASSACHUSETTS 02535
(617) 645-9265

9/10/80

IMPORTANT

The Wampanoag Tribal Council of Gay Head is presently involved in the initial phase of preparation of the Tribe's Federal Recognition Petition. Research efforts are underway to compile historical and geneological information to support this document.

To this end the WTCGH has compiled a preliminary list of tribal members. However, it is probable that not all of the people of Gay Head Wampanoag lineage are represented by this effort. Those members of the tribe who have moved away and lost contact with Gay Head or for any other reason have not been listed must be notified. If you have recieved this letter, you and your immediate family are listed on the preliminary Tribal Roll.

We need people to respond in two ways. One, please take the time to list all members of your family with their current addresses. Essential information such as name, date of birth, parents, and names and ages of any minor children should be noted. Secondly, if you know of any Gay Head Wampanoag people who may not be on the Tribal Roll and have had no contact with the Tribal Council or Gay Head, please include the names of these people and any information you may have that would facilitate locating them.

There is a return, stamped envelope for your convenience. Please help make the Gay Head Wampanoag Tribal Roll as complete as Possible.

Donald Widdiss
Tribal Coordinator

EXHIBIT A

NOTICE TO TRIBAL MEMBERS

Dear Tribal Member,

As many of you know, the Tribal Council is currently completing documentation of individual and family genealogies to support the Gay Head Wampanoag Federal Recognition Petition. The Gay Head Wampanoag tribe is using the 1870 Pease Report, a.k.a. set off, baseline for tribal genealogies. This is recognized as the best source of documentation of Gay Head Wampanoag tribal lineage.

Enclosed you will find the information we have been able to collect about your family. In order to complete the genealogical part of the petition, the Tribal Council would like you to check the information we have to date. If there is a check beside a name, it means we need some documentation of the birth and/or birthplace since we could not document the information ourselves. This information can be either a birth certificate or birth record, or some indication of where the records could be found.

Please note any additional information that may be required to complete your family records, including the addition of any family members that may not be listed and, to the best of your ability, complete the information on the forms provided and return the forms to the Tribal Council office. Try to be as accurate and complete as possible. A pre-addressed envelope is provided for your convenience in returning the forms.

If, for whatever reason, you do not wish to be included as a member of the Wampanoag Tribe of Gay Head in the Federal Recognition process, please notify the Tribal Council office in writing stating your wishes. If no notification to that effect is received, we will automatically include your name on the membership roll. If your children are over eighteen years of age, they must write their own requests.

This information is vital to our progress. We plan to submit our petition in March and your prompt reply is greatly appreciated. Please take the time to respond. The information we receive will be submitted to the Bureau of Indian Affairs and will be used as the basis for determining tribal membership. Any further questions regarding this procedure should be directed to the tribal office at (671)645-9265. We will be glad to answer any inquiries.

Yours in Brotherhood,

Bettina H. Malonson

Bettina H. Malonson

CERTIFICATE OF WITHDRAWAL

I, ____________________________, am over the age of eighteen and state as follows:

> I am a named Plaintiff in a lawsuit entitled Frank B. James v. Wampanoag Tribal Council of Gay Head, Inc.
>
> In this lawsuit I seek, among other things, to have the Court affirm that I irrevocably state my desire to withdraw my name from membership in the Wampanoag Tribal Council of Gay Head, Inc.
>
> I understand that by signing this Certificate of Withdrawal I will have my name struck from the corporate membership, that I will not be eligible to participate in any future corporate activities or be eligible for any rights and/or benefits that may be shared by the remaining members of the corporation.
>
> I also understand that this withdrawal is final and that I will not be able to rejoin the corporate membership in the future.

I certify under penalty of perjury that the above is true and correct.

Dated: ____________________ ____________________________

Notary:

EXHIBIT B

HAHN & MATKOV
ATTORNEYS AT LAW

40 COURT STREET, BOSTON, MASS. 02108
ROOM [illegible] TELEPHONE [illegible]

ROBERT C. HAHN
I. ALBERT MATKOV
WILLIAM A. HAHN

OF COUNSEL
D. W. WHITEHEAD
ROBERT R. PARKER

27 June 1985

Donald Hodel, Secretary
U. S. Dept. of the Interior
Washington, D. C. 20245

Dear Secretary Hodel:

As you may know, the Gay Head Indian Tribe, whose aboriginal homelands are located on the westerly end of Martha's Vineyard Island in Massachusetts, is one of the six remaining tribes of the old Wampanoag Nation which originally encompassed southern Massachusetts and eastern Rhode Island.

In 1869 and 1870, without federal assent, Massachusetts illegally dispossessed the Gay Headers of their 3400 acre reservation, their tribal governing powers and their tribal fishing, hunting and other tribal rights and assets, transferring all such to a specially created Massachusetts political subdivision called the Town of Gay Head, thereby enabling non-Indian encroachment on the Gay Headers' reservation.

During the past several years, the Gay Headers, as other old Eastern tribes, have become increasingly interested in asserting their federal rights. In the process, two Gay Head factions have emerged, each constituting about half the known members of the Tribe.

We represent one faction, known as the James group. The other faction, which calls itself the Wampanoag Tribal Council of Gay Head, Inc. (a Massachusetts membership corporation) is represented by the Native American Rights Fund (NARF).

Each group advocates a fundamentally different course for the Gay Head Tribe.

The James group, for example, seeks restoration of tribal sovereignty over as much of their reservation as possible, including the tribal common lands, all vacant lands, all tax forfeited lands, all lands of low value and all remaining monuments of Gay Head Indian culture such as their cliffs, their cranberry bogs, their burial grounds, their ancient church, their ancient post office (toad rock), their ancient trails and roads as well as restored tribal control over fishing, hunting, beach, water and other critically important tribal rights.

The Widdiss group, on the other hand, is most amenable to non-Indian and Massachusetts wishes, who essentially propose maintaining the status quo in return for purported tribal control over the common lands and a possible 175 acres of bankruptcy estate lands. But actual control would be in a Massachusetts tribal land holding corporation essentially subject to state and local laws. In addition, the Gay Headers would relinquish all tribal and derivative claims, including fishing, hunting, beach and water rights, their monuments,

EXHIBIT C

their trails and their sovereignty.

And without detailing all the facts, suffice it to say each group has brought land and other suits in federal court, as well as three related state cases brought by the James group, all of which are in various stages of litigation.

Last year, in an effort to settle their land suit, the Widdiss group filed implementing legislation in Massachusetts and Washington, D. C. Both bills died. In fact, after a lengthy hearing last June which BIA officials Hazel Elbert and John Shapard attended, the U. S. House Interior and Insular Affairs Committee concluded the Gay Head Tribe was so evenly split, the Widdiss bill should not proceed.

In further fact, presumably responding to a James group suit against the U. S. Department of Health and Human Services, we have unofficially learned that HHS has refused further ANA funding to the Widdiss group, who, as alleged, had wrongfully held themselves out to HHS as the governing body of the Gay Head Tribe.

Against this background, then, Mr. Secretary, we recently learned the Widdiss group, as purported governing body of the Gay Head Tribe, is petitioning your Bureau of Indian Affairs for federal recognition pursuant to 25 CFR Part 83.

The James group is firmly opposed to this Widdiss group effort because:

(1) they believe the Gay Head Tribe is already federally recognized;
(2) under acknowledgement regulations, a petitioner must submit a list of all known members of the group. Presumably the Widdiss group included the members of the James group in this list. The James group has not been asked for or given permission to use their names in this or any other connection; and
(3) in any event, the Widdiss group agreed in writing with the non-Indian residents of Gay Head, that they would not seek federal acknowledgement until their land suit settlement agreement expired on 22 July 1985.

Quite simply, Mr. Secretary, the Widdiss group is neither the Gay Head Tribe nor the governing body of the Gay Head Tribe.

Stripped of its governing powers 115 years ago, albeit wrongfully, certainly the Gay Head Tribe cannot itself govern or create a governing body. And with the 50-50 split among its members, the Tribe cannot even choose an informal representative group. Nor can the Widdiss group impose a governing body on the Tribe. For despite the apparent leadership trappings of the Widdiss group's various letterheads and other self serving statements, "[c]lothes may help the man, but they can't make the man." And despite the Widdiss group's manipulation of the Massachusetts membership corporation (the Wampanoag Tribal Council of Gay Head, Inc.), Massachusetts cannot create a governing body for the Gay Head Tribe (see UNITED STATES v. PAWNEE BUSINESS COUNCIL, 382 F Supp 54 (ND Okla 1974)).

So what it comes down to, Mr. Secretary -- given the factional split within the Gay Head Tribe, your Department must be neutral. It must not choose or deal with one Gay Head group over the other:

> "In view of the well-recognized responsibility of the government to deal fairly with all Indians, the Department's trust responsibility requires that it remain neutral with regard to the various [Gay Head] factions — the government must deal fairly with all [Gay Headers], not just the [Widdiss group]." ONEIDA INDIAN NATION v. CLARK, 593 F Supp 257, 265 (NDNY 1984).

In other words, unless and until the two groups reach an accomodation on the acknowledgement issue among themselves, we believe Interior is legally obligated to remain on the sidelines.

Accordingly, Mr. Secretary, we ask you return the Widdiss group's acknowledgement petition without action.

Sincerely,

Robt C Hahn

ROBERT C. HAHN

H:b

cc: Hazel Elbert, Director
Office of Indian Services

John Shapard
Federal Acknowledgment Branch

Tribal Government Services - AR
BCCO 2193

JUL 24 1985

Mr. Robert C. Hahn
Hahn & Matkov
40 Court Street
Boston, Massachusetts 02108

Dear Mr. Hahn:

This refers to your letter of June 27, 1985, to Secretary Hodel, requesting that the Branch of Acknowledgment and Research within the Bureau of Indian Affairs (BIA) remain neutral with respect to an internal schism of the Gay Head Wampanoag Indians and that the Bureau ". . . return the Widdiss group's acknowledgment petition without action."

First, as a matter of record, the Branch of Acknowledgment and Research always remains neutral with regard to Acknowledgment cases which it evaluates. Notwithstanding pressures from conflicting interests on certain past cases, the Branch of Acknowledgment and Research has consistently maintained a record of scrupulous neutrality and honesty since its establishment in 1978.

Second, we cannot return the Gay Head Wampanoag petition for acknowledgment "without action" based solely on your assertion that the two factions are divided equally in numbers, since the so-called "Widdiss group" asserts that they represent the majority faction and have submitted a tribal roll of 537 persons to substantiate their claim. There is some question as to whether it is within the jurisdiction or prerogative of the Secretary to withhold action on a petition for Federal acknowledgment as an Indian tribe owing to an internal political schism of the group which submitted the petition. Such an action on the Secretary's part would no doubt require irrefutable evidence that the factions are in fact equally divided.

However, should you wish to continue to request that the BIA, through the Secretary, withhold action on the Gay Head Wampanoag petition, your request will be considered under one condition, assuming the BIA is not precluded from considering or, indeed, from later acting upon your request. This condition is that you provide a complete list of the Gay Head Wampanoag members who claim allegiance to the "James group," including full names, dates of birth, current and complete addresses and, most important, a signed statement by each person on this list that he or she is a member of the James group and consents to being on this list as such. Regarding this condition, the signed affidavits collected at the time during which James vs. Watt was appealed to the U.S. Supreme Court will not suffice; rather, we will require that this list be current and that it indicates clearly and unequivocally that those persons listed understand they are declaring themselves part of the James group and wish the BIA to withhold action on the Gay Head Wampanoag petition. Moreover, a direct statement from the leadership of the James group must accompany this list certifying its correctness and authenticity and declaring that all those on the list do not wish to be considered for acknowledgment as a tribe under the current petition of the Gay Head Wampanoags.

Sincerely,

Hazel E. Elbert

Acting Director, Office of Indian Services

HAHN & MATKOV
ATTORNEYS AT LAW

40 COURT STREET, BOSTON, MASS. 02108
ROOM [illegible] TELEPHONE [illegible]

ROBERT C. HAHN
I. ALBERT MATKOV
WILLIAM A. HAHN

OF COUNSEL
D. W. WHITEHEAD
ROBERT R. PARKER

1 October 1985

Donald Hodel, Secretary
U.S. Department of the Interior
Washington, D.C. 20245

Dear Secretary Hodel:

I have a July 24 letter from Hazel Elbert, Acting Director of your Office of Indian Services, presumably responding on your behalf to our 27 June letter to you concerning the Gay Head Indian Tribe. Please accept my apologies for not getting back sooner but we've been uncommonly busy with litigation.

Unfortunately, we're not satisfied with Mrs. Elbert's letter or pleased with what's happened since.

I'm sure she means well, for we understand Mrs. Elbert is considered able and and sincere. But we think she misconstrues our position and unwittingly favors a rival Indian faction.

As stated in our original letter, Mr. Secretary, we represent the James group, one of two rival factions within the Gay Head tribe. The second faction, the Widdiss group, calling themselves the Gay Head Tribal Council, is represented by Henry Sockbeson, Esq., a NARF attorney.

As also stated, in 1869 and 1870, without federal assent, the Commonwealth of Massachusetts purportedly stripped the Gay Headers of their Indian status, and turned over control of their 3400 acre federal reservation, their tribal fishing and hunting rights and their other tribal rights and assets, to the Town of Gay Head, a newly created political subdivision of Massachusetts.

The net result of this illegal state action was to permit non Indian intrusion onto the Gay Head reservation to the extent that today in the Town of Gay Head the non Indian voters substantially outnumber the Indian voters thereby giving non Indians the whip hand over the Gay Head Indians and their reservation.

Convinced the only way to regain as much tribal control as possible over their affairs and their homeland is aggressive assertion of their federal Indian rights, the James group have made every possible move to accomplish their purpose, including a renewed full scope land suit including fishing, hunting, beach and other rights as well as correllary actions challenging the Widdiss group's assertion they exclusively speak for the Gay Head tribe.

By contrast, the Widdis group is essentially passive in their dealings with the non Indians. They are willing to accept the status quo and trade off all tribal and individual Indian rights in land, fishing, hunting, burial grounds, ancient trails and other ancient Indian monuments in return for free house lots for a few of their followers on 175 acres of land to be held under tight state and local control.

But a primary question with which both factions are presently dealing is federal recognition which directly involves your Department.

Our clients believe the Gay Headers already have prior federal recognition as a matter of law. So they brought a lawsuit seeking a judicial declaration to that effect which is pending in the federal circuit court in Washington, D.C., to which your Department is party. See JAMES v HHS et als, No 85-5920.

The Widdis group, on the other hand, apparently believing the Gay Headers are not federally recognized, have filed a petition for federal recognition with your Bureau of Indian Affairs, which Mrs. Elbert apparently has not only agreed to process but to accelerate.

Among other things petitioner presents a list of tribal members which admittedly includes most of our clients thereby implying their support for the Widdis' petition.

We, of course, object to the Widdiss group's petition and their unauthorized use of our clients' names. So we asked that you return the Widdiss petition "without action", stressing that having been stripped of their tribal governing powers, the Gay Headers can create neither an official governing body nor an official tribal roll. In fact, because of their deep division, the Tribe cannot even agree on one unofficial group to represent the tribal interests.

And as far as tribal roll is concerned, our clients vigorously oppose the Widdiss list because it uses an incomplete 1870 base group which does not include several old Gay Head families. Under these circumstances, Mr. Secretary, we firmly believe your Department must remain neutral.

Furthermore, with the pendency of our suit, and where your Department is party to that suit, we think it inappropriate on that ground alone, that Mrs. Elbert entertain the Widdiss group's petition, let alone accelerate it.

In short, Mr. Secretary, we think both neutrality and the pending suit compel "hands-off" by Mrs. Elbert.

Obviously the James group are not against federal recognition. But, as stated, they believe the Gay Headers already have federal recognition — and — without terms.

So it makes no sense to the James group for the Widdiss group to come to your Bureau of Indian Affairs, hat in hand, seeking federal recognition on terms that would require the Gay Headers to give up all land claims, all fishing and hunting rights, and to abandon all efforts to regain some meaningful control over their affairs.

Beyond that, Mr. Secretary, we'd appreciate your taking a look at Mrs. Elbert's letter, a copy of which is attached.

By taking the assertions in the Widdiss group's petition at face value (taking their word) but declining to give similar effect to our clients' assertions (not taking our word) Mrs. Elbert is clearly taking sides.

Furthermore, she imposes "conditions" on our group, but not on the Widdiss group.

For example --

She requires that the James group "provide a complete list of the Gay Head Wampanoag members who claim allegiance", together with several other conditions.

The fact is, Mrs. Elbert already has a substantially complete list of the James group we provided at a hearing she attended in Congress last year.

But more important, we feel imposing these "conditions" merely underscores Mrs. Elbert's partiality.

Also, in our opinion, Mrs. Elbert and her associates show their partiality by reportedly sharing our letters and our list with the Widdisses and their attorney, but refusing to share the Widdiss petition and list with us or our clients. Their excuse? "Sorry, that's confidential."

To sum up, Mr. Secretary --

Because the James group believes the Gay Headers already have unfettered federal recognition as a matter of law, obviously the James group is not against federal recognition.

Accordingly, the James group is against the Widdiss group's petition not only because they believe it untimely, but unnecessary.

And finally, the James group strongly protests Mrs. Elbert and her associates violating your Department's required neutrality towards rival tribal factions. Not only they believe it improper she share data with one faction but not with the other, she should not be sending her agents to Gay Head in an effort to accelerate the Widdiss petition and possibly undermine the James suit.

We'd very much appreciate hearing from you, Mr. Secretary.

Sincerely,

Robt Hahn

ROBERT C. HAHN

H:c

cc: Hazel Elbert, Acting Director
Office of Indian Services

John Shapard
Federal Acknowledgment Branch

RECEIVED
OCT 15 1985

United States Department of the Interior

OFFICE OF THE SOLICITOR
WASHINGTON, D.C. 20240

OCT 24 [illegible]
440 re BCEO
2801

In reply please refer to:
Main Interior, Room 6456

Mr. Robert C. Hahn
Hahn & Matkov
40 Court Street
Boston, Massachusetts 02108

OCT 24 1985

Dear Mr. Hahn:

We are in receipt of your letter of October 1 to Secretary Hodel. Inasmuch as this matter is presently being litigated, your letter was referred to our office for response. At the outset, let us be unequivocal in setting the record straight regarding the status of the Gay Head Wampanoag Indians. The Gay Head Wampanoags have never been regarded by the Department of the Interior or the Bureau of Indian Affairs as wards of the United States, as having any kind of trust relationship or special government-to-government relationship with the United States, or as being federally acknowledged either prior to or subsequent to 1870, notwithstanding your assertions to the contrary.

Moreover, we are fully cognizant of not only the history of the Gay Head Wampanoags, but of the issues surrounding the land claims litigation and the internal situation within the group as it relates to the factions. We stand by the conditions imposed by our July 24 letter. Should you wish the Department to withhold action on the Gay Head Wampanoag petition for Federal acknowledgment, you must comply fully with those conditions. Otherwise, we will continue with the active evaluation of the petition.

Sincerely,

Tim Vollmann

Tim Vollmann
Associate Solicitor
Division of Indian Affairs

GAY HEAD WAMPANOAG TRIBE
STATE ROAD, RFD BOX 137, GAY HEAD, MASSACHUSETTS 02535 • (617) 645-9265

GAY HEAD
WAMPANOAG TRIBE
Donald Malonson

Luther Madison
Medicine Man

WAMPANOAG TRIBAL COUNCIL
OF GAY HEAD, INC.

Good morning Mr. Chairman. My name is Luther T. Madison. I am a member of the Wampanoag Tribe of Gay Head and am a lifelong resident of Gay Head. Since the death of my father in 1972 I have served as the tribe's medicine man. My father had served as medicine man from 1923 until his death.

I have come here today to express my support for S 1452. I have always supported this legislation and believe that this settlementwill serve the tribe and the Town's best needs. Hopefully, this settlement will permit the Town and the tribe to work together to make Gay Head a safe and friendly community once again.

I know that there are people within the tribe who oppose the settlement but I have listened to their objections and arguments at tribal and Town meetings and find them, in my mind, to be unquestionably wrong.

This settlement preserves the Town common lands for the tribe, which has been a major objective from the start of the suit. It also provides that the tribe will acquire land that can be used for affordable housing. This will ensure that our people are not driven out of Gay Head by the forces of the marketplace.

As a tribe we have considered the terms of this settlement time and time again. We have conducted open tribal meetings and have discussed the settlement at numerous Town meetings. I believe that any tribal member who is interested has complete knowledge of the terms of settlement and is aware that, although not perfect, it achieves our basic tribal goals. The tribe has voted on two ocassions to accept this settlement. I have no doubt that a substantial majority of tribal members want and need this settlement.

We Indians of Gay Head have always been a tribe and we have always believed that. We have always taken care of our own and have conducted our own affairs This bill will ensure that our way of life will not be lost. I urge this committee to act favorably on S 1452 as soon as possible.

Mr. Chairman, I'd like to thank you for providing me with this opportunity to testify here today. This concludes my remarks. I would be willing to answer any questions you may have.....

Luther T Madison

STATEMENT OF JACK CAMPISI IN SUPPORT OF S.1452
A BILL TO SETTLE THE INDIAN LAND CLAIMS IN THE TOWN OF GAY HEAD

APRIL 9, 1986

Mister Chairman and Members of the Committee:

I am here today to express my views on tribal membership as it relates to Senate Bill 1452, "A Bill To Settle The Indian Land Claims In The Town of Gay Head."

I hold a doctorate in anthropology from the State University of New York at Albany, where I received training in archival research and field methodology. Since 1978 I have assisted a number of tribes in the preparation of petitions for federal acknowledgment. I have attached a copy of my curriculum vitae which provides further information on my background.

I have worked with the Gay Head Wampanoag Tribe since 1981 on their petition. In that year I began researching the tribe's history, and later conducted a field study of the community and its leadership. In the course of this work I had the opportunity to review in detail the genealogical records of the tribe.

At the outset I would like to make clear the distinction between the Gay Head Wampanoag Tribe and other Wampanoag groups. Historically, the Gay Head Wampanoag Tribe has been recognized as a separate entity since the seventeenth century. John Milton Earle who conducted a study of the Indian population for the commonwealth of Massachusetts in 1859, identified 12 tribes or groups of Indians within the commonwealth. During the course of my research with the tribe I found no instance when any Indian group exercised any control over the Gay Head Wampanoag Tribe. It has been advanced by some that there is a sizeable number of individuals who are Wampanoags, and therefore eligible for membership in the Gay Head Wampanoag Tribe. This is an error based on either a lack of understanding of the structure of the tribes or a misrepresentation of the tribe's membership rules. It apparently derives from a failure to distinguish between Gay Head Wampanoag Indians and all others who claim Wampanoag descent.

The criteria for membership in the Gay Head Wampanoag Tribe has been determined by the Gay Head Wampanoag Council, and is based upon the 1871 census taken by Richard L. Pease. In order to be a member of the tribe an individual must apply and must submit documentation to show his or her relationship to someone on the 1871 census. To the best of my knowledge the present tribal membership list represents virtually all of those eligible for membership.

Some have questioned the wisdom of using the 1871 census as opposed to other censuses available. In response, allow me to review the possibilities. There were three censuses taken of the Gay Head Wampanoag Tribe in the nineteenth century. The first is entitled "Report of the Commissioners Relating to the Condition of the Indians in Massachusetts," and was published in 1849 as the Massachusetts House of Representatives Document No. 46. This report, sometimes referred to as the Briggs Report, after the chairman of the commission, gives the names and the ages of 174 persons who are identified as members of the "Gay Head Tribe." The second census comes from the Massachusetts State Senate (Senate Document No. 96), and is entitled "Report to the Governor and Council, Concerning the Indians of the Commonwealth, Under the Act of April 6, 1859." The study is commonly referred to by the name of its author, John Milton Earle. It provides two lists, one containing 204 names of individuals who are recognized as having rights as members of the tribe, and another containing 49 names who, although they came from Gay Head, were not recognized as being members of the tribe. The Earle census gives more data including marital status, tribe or nationality, occupation, residence, and quantity of land and stock. The third census is entitled "Report of the Commissioner Appointed to Complete the Examination and Determination of All Questions of Title to

Land, And of All Boundary Lines Between the Individual Owners, At Gay Head, On the Island of Martha's Vineyard." This report was made by Richard L. Pease. It contains the date and place of birth, residence and occupation of each of 227 individuals representing 55 families. In addition, it provides the maiden names of the married women, the dates of birth and, most importantly, the names of the parents. When I compared this census with the Earle census of 1859, I found that there are a number of individuals on the Pease census who are not on the Earle census. If the Earle census had been used it would have had the effect of denying membership to a number of individuals. There are a few people listed on the 1859 census who do not appear on the 1871 census, but I did not find that this presented any problem for those who have applied for membership. Since tribal members tended to marry other tribal members, particularly during the nineteenth century, and since the tribe accepts descent from either parent, individuals had no problem tracing their descent. Finally, I found that the 1871 census was preferable because it involved a division of land. I reasoned that there was likely to be a more critical look at the membership under such conditions. The Briggs census of 1849 was not chosen because the data are too meager.

In conclusion Mr. Chairman, it is my professional opinion that the current Gay Head Wampanoag tribal membership list is as complete as can reasonably be expected. There has been an honest effort to include all those who are eligible and I believe the margin of error to be less than ten percent.

Thank you for providing me with an opportunity to appear before you today.

CURRICULUM VITAE

Jack Campisi December, 1985

Personal and Professional Background:

Date of Birth: October 7, 1931
Marital Status: Married, three children
Citizenship: United States
Social Security: 124 26 2937
Home Address: Rd #2, Box 492
Red Hook, N.Y. 12571
(914) 758-6183

Education:

1953 State University of New York, Albany, B.A. History
1958 State University of New York, Albany, M.A. Social Studies
1972 State University of New York, Albany, M.A. Anthropology
1974 State University of New York, Albany, Ph.D.
1979 State University of New York, Albany, School of Criminal Justice, Post-doctoral

Academic Employment:

1964-1970 Instructor (part-time), Dutchess Community College, Poughkeepsie, N.Y.
1969-1979 Departments of Anthropology and Secondary Education, SUNY, College, New Paltz, N.Y.
1972 Summer, Visiting Professor, University of Wisconsin, Green Bay.
1979-1983 Department of Anthropology, SUNY, Albany N.Y.
1983 Assistant Professor (part-time), Bard College, Anandale-on-Hudson, N.Y.
1985 Assistant Professor (part-time), Vassar College, Poughkeepsie, N.Y.

Current Academic Position:

1983 -Present Department of Anthropology, SUNY, College, Oneonta, N.Y. (adjunct Associate Professor).

Books and Book Length Manuscripts:

1974 Ethnic Identity and Boundary Maintenance in Three Oneida Communities. Ph.D. dissertation, SUNY, Albany.
1978 Neighbors and Intruders: An Ethnohistorical Exploration of the Indians of Hudson's River. Co-editor Lawrence M. Hauptman. National Museums of Canada, Mercury Series 39. Ottawa.
1978 Memorandum on the Pre-1789 Oneida Indian Land Claims. Submitted to the Department of Interior on Behalf of the Oneida Indians.
1980 Acknowledgement Report for the Mashpee Wampanoag Indian Tribe.
1982 Mashpee: Tribe on Trial. completed and submitted for publication. (rights and manuscript turned over to the tribe).
1983 Acknowledgement Report for the Mashantucket Pequot Indian Tribe.
1984 Extending the Rafters: Interdisciplinary Approaches to Iroquoian Studies. Co-editors Michael Foster and Marianne Mithun. SUNY Press.

Articles:

1974 Consequences of the Kansas Claim to Oneida Tribal Identity. Proceeding of the First Congress, Canadian Ethnology Society. Jerome H. Barkow, ed. National Museums of Canada, 17, Ottawa.
1975 Powwow: A Study of Ethnic Boundary Maintenance. Man in the Northeast, Vol. 9.
1976 The New York-Oneida Treaty of 1795: A Finding of Fact. American Indian Law Review, Vol. 4. No. 1.
1978 The Oneidas. In Northeast. Bruce G. Trigger vol. ed. Handbook of North American Indians, Vol. 15. William C. Sturtevant, gen. ed. Washington: Smithsonian Institution.
1978 The Onondagas. Co-authors Harold Blau and Elisabeth Tooker. In Northeast. Bruce G. Trigger, vol. ed. Handbook of North American Indians, Vol. 15. William C. Sturtevant, gen. ed. Washington: Smithsonian Institution.
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1979 Fur Trade and Factionalism of the Eighteenth Century Oneida Indians. In Studies on Iroquois Culture. Occasional Publications in Northeastern Anthropology 6.
1980 Foreword. In Indian Nullification of the Constitutional Laws of Massachusetts Relative to

the Mashpee Tribe: Or the Pretended Riot Explained, by William Apes. Stanfordville, N.Y.: Earl M. Coleman.

1980 Residual Sovereignty: The Iroquois Record. Co-author Lawrence M. Hauptman. In Indians in Contemporary Society. Vine Deloria, Jr., vol. ed. Handbook of North American Indians. Vol. 2. William C. Sturtevant, gen. ed. Washington: Smithsonian Institutión.

1980 Two Letters: Oneida. Co-author Richard Chrisjohn. In Northern Iroquoian Texts. Marianne Mithun and Hanni Woodbury, eds. International Journal of American Linguistics - Native American Text Series, Monograph 4. Chicago: University of Chicago Press.

1981 Talking Back: The Oneida Folklore Project 1938-1941. Co-author Lawrence M. Hauptman. Proceedings of the American Philosophical Society. Vol. 1254 (6): 441-448.

1982 The Iroquois and the Euro-American concept of Tribe. New York History. Vol. 63 (2): 165-182.

1984 National Policy, States Rights and Indian Sovereignty: The Case of the New York Iroquois. In Extending the Rafters: Interdisciplinary Approaches to Iroquoian Studies. Michael Foster, Jack Campisi and Marianne Mithun eds. Albany: SUNY Press.

1985 The Trade and Intercourse Acts: Land Claims on the Eastern Seaboard. In the Wayward Estate: Indian Land Claims in America. Imre Sutton, ed. University of New Mexico Press.

Papers, Symposia and Guest Lectures:

1973 Factionalism, Belief Systems, and Ethnic Boundaries Among the Oneida of the Thames. Conference on Iroquois Research.

1974 The Oneida Language Project. Colloquium on Second Languages and Linguistics. Conference on Iroquois Research.

1974 The Indians of Hudson's River. Annual Eastern Regional Conference on the Native American.

1977 Land Claims in New York. Conference on Iroquois Research.

1978 Tribes and Tribulations. Conference on Iroquois Research.

1978 The Buying of New York State: Iroquois-White Relations in the Post-Revolutionary War Period. Cherokee-Iroquois Conference. Qualla Boundary, Cherokee, North Carolina.

1978 The Ethics of Expert Testimony. Colloquium on Indian Law. Princeton University. Invited Paper.

1980 The Iroquois and the White Man's Concept of

Tribe. Annual Eastern Regional Conference on the Native American. New Paltz New York.
1981 Anthropology and Federal Recognition. Second Annual Native American Law Conference. Cornell University. Invited Paper.
1981 Guest Lecturer. University of Western Ontario, London, Ontario.
1981 Guest Lecturer. Vassar College, Poughkeepsie, New York.
1981 Guest Lecturer. Wellesley College, Wellesley, Massachusetts.
1982 Guest Lecture. Vassar College, Poughkeepsie, New York.
1983 Guest Lecture. Vassar College, Poughkeepsie, New York.
1984 Guest Lecture. Vassar College, Poughkeepsie, New York.
1984 When Three Are One: Akwesasne Mohawks. Conference on Iroquois Research.
1985 From Stanwix to Canandaigua: National Policy, States' Rights, and Indian Land. Conference on Iroquois Research.
1985 Guest Lecture. Wellesley College, Wellesley, Massachusetts.

Expert Testimony:

1975 Expert Witness in the case of Oneida Indian Nation of New York et al. v. Counties of Oneida and Madison. 70-CV-35.
1977 Expert Witness in the case of Mashpee Tribe of Indians v. New Seabury et al., 76-CV-3190-S.
1981 Expert Witness in the case of Oneida Indian Nation of New York et al. v. Counties of Oneida and Madison. 70-CV-35. (trial for damages).
1984 Expert Witness in the case of Oneida Indian Tribe of Wisconsin, Inc., et al. v. State of New York et al. 78-CV-167.
1985 Expert Report on the Aboriginal Claim of the Alabama-Coushatta Tribe of Texas. Congressional Reference No. 3-83. U.S. Claims Court.

Consultancies:

1974 University of Wisconsin, Green Bay. Film Project "The Oneida Indians," produced for the Wisconsin Heritage Television Series. Historical Consultant.
1975-
1978 Oneida Indian Language Project. Oneida Indian of Wisconsin, Inc. Curriculum Consultant.
1979-
1986 Mashpee Wampanoag Tribe Inc. Mashpee,

Massachusetts. Federal Acknowledgment Project.

1979-1982 Narragansett Tribe of Indians. Assistance in the preparation of Federal Acknowledgement Report.

1980-1985 Mashantucket Pequot Tribe of Connecticut. Consultant for Museum and Archive Project.

1981 Western Abenaki of Vermont. Consultant on Federal Acknowledgement Project.

1982-1985 Gay Head Tribe of Indians. Federal Acknowledgement Project.

1982 Lumbee Indian Tribe of Indians, North Carolina. Consultant on Federal Acknowledgement Project.

1983-1985 Eastern Pequots of Connecticut. Federal Acknowldegement Project.

1983-1985 United Houma Nation of Louisiana. Federal Acknowledgement Project.

1983-1986 Cayuga Nation of New York. Historical Research.

1984 Bureau of Federal Acknowledgement. Conference. Review of Regulations.

1985-1986 Lumbee Indian Tribe of Indians, North Carolina. Federal Acknowledgment Project.

1985-1986 Haliwa-Saponi Tribe Inc., North Carolina. Federal Acknowledgment Project.

Native American Rights Fund

Testimony of Henry Sockbeson
in Support of S. 1452
A Bill to Settle the Indian Land Claims in the Town of Gay Head
April 9, 1986

Mr. Chairman and Members of the Committee. My name is Henry Sockbeson. I am a member of the Penobscot tribe and an attorney with the Native American Rights Fund and since October of 1983 I have been representing the Wampanoag Tribe of Gay Head. Gladys Widdiss will address you concerning the settlement itself. I would, however, like to outline the rather extensive litigation that has been brought by the dissident faction within the tribe wherein they have attempted to thwart, on various federal and state law theories, the settlement of this case.

Immediately after a 1981 vote of the tribe which approved the principles of settlement of the tribe's land claim, a small faction within the tribe which disagreed with the terms of the settlement retained attorney Robert Hahn to represent them. He immediately filed a motion to intervene in the tribe's land claim in federal district court (Wampanoag Tribe of Gay Head, Inc. v. Town of Gay Head, No. 74-5826 (D. Mass)) on behalf of these dissidents. The purpose of this intervention was to obstruct and challenge the settlement process which the majority of tribal members had approved of.

After this motion was denied by the court, rather than appeal the denial, the case was dropped and a new, separate action was filed. This "new" action was filed in the same court where the tribe's land claim was then pending. It was brought on behalf of the dissidents and sought essentially the same relief on the same theories as advanced by the tribe in its land claim suit.

The district court granted summary judgment against the dissidents and they appealed. The decision issued by the First Circuit Court of Appeals affirmed the district court's decision. I have attached a copy of this decision to my testimony. See James v. Watt, 716 F.2d 71 (1st Cir. 1983), cert. den. 104 S.Ct. 2397 (1984), (Exhibit A).

Having failed on every level in the federal courts to stop the settlement the dissidents next turned to the state system.

There the dissidents filed an action in state probate court alleging a cause of action based upon misappropriation of name, invasion of privacy, and fraud/deceit. They seem to allege that the tribal corporation somehow injured them by casting them in a false light when the corporation, after tribal vote, took action to settle the tribe's land claim. In any event, this probate action was filed with less than 24 hours notice to the attorneys for the tribe. Because the tribal attorneys were located in Maine and Washington, D.C., we were unable to attend the probate hearing. We are convinced that this action without adequate notice was taken purposely, with the intent that the tribe would not be represented at the hearing. The result of the probate court hearing was that a ten day temporary restraining order was issued.

This probate court action was removed to federal court and the restraining order dissolved. Rather than appeal this order the dissidents filed a new action in state superior court alleging the same cause of action that was plead in the probate court. Again, this action was removed.

I will not attempt to here outline all of the various additional complaints that were filed in state court -- all alleging the same cause of action. Instead, I have appended a copy of the district court's decision in James v. Bellotti, 733 F.2d 989 (1st Cir. 1984) (Exhibit B). In this decision the court outlines the bizarre parade of actions that were filed in an attempt to stop the tribe's signing of the settlement agreement. The James v. Bellotti decision held that on the face of the complaints on file no federal issues were raised and so removal was improper.

The state court actions were remanded to the state court system where they were consolidated on the tribe's motion. The superior court ruled on October 30, 1985 that the state court actions were all barred by the doctrine of res judicata (meaning roughly in this case that when a federal action is brought all claims both state and federal must be stated -- failure to raise the state claims prohibits their subsequent filing in state court). Because the dissidents had two prior opportunities to bring their state claims before a federal judge (including *James v. Watt*, *supra*) and failed to do so they could not have, in effect, two bites at the apple and thus res judicata appropriately barred their litigation of the state claims. I have also attached a copy of the superior court's order.

Like all other decisions that Mr. Hahn has lost this one too has been appealed. Recently Mr. Hahn wrote to this committee suggesting that hearings be delayed because of the pendency of this suit and that "the court will likely make a decision by summer or early fall." This is simply not the case. Even were Mr. Hahn to prevail on appeal -- an extremely unlikely event given the decision of the superior court and the language of the *Bellotti* appeal (see. p. 994), the case could only be remanded. From the face of the judgment it is clear that only the issue of res judicata is before the appeals court. If the matter is remanded the issue of merit will have to be decided. Unless there is an agreed statement of fact (unlikely as no such agreement was possible earlier) there would have to be a jury trial. Because of the long wait for a civil jury trial in Massachusetts there could be no initial resolution for two years or more. Appeals, of course, would add at least another year or two no matter who won. The assertion that S. 1452 should be delayed pending the resolution of these state claims is ludicrous. Mr. Hahn has never proven his claim and despite his familiarity with the Massachusetts judicial system has been unable to restrain action by the tribal corporation.

To provide an example of the level of concern exhibited by the dissidents for the good of the Wampanoag Gay Head people, the Committee should be aware that Mr. Hahn recently filed an action in the District Court for the District of Columbia (James v. H.H.S., No. 85-0417). In this action he challenged the right of the tribe to receive monies from the Administration for Native Americans for the purpose of administering a health care grant which benefited all tribal members on Martha's Vineyard. The dissidents attempted to stop the funding of this program but their motion for an injunction was denied. By their action they show their vindictive and short-sighted nature. They are demonstrably willing to sacrifice the opportunity for good health care for their tribal members in order to launch a punitive legal action against the elected representatives of the tribe.

In conclusion Mr. Chairman, there is currently no state judicial proceeding which in any way restrains the Wampanoag Tribal Council of Gay Head from entering into the settlement agreement, nor is any such action likely. The judicial efforts of the dissidents, despite over three years of effort, have not restrained the settlement of this claim. I ask you to examine the recorded decisions now before you and to consider the exaggerated claims which will be made by Mr. Hahn in their light.

Twenty years have passed since the one person-one vote concept was articulated. Whatever special deference may have existed in the past has considerably less justification now. Thus we see no reason to depart from traditional stay analysis.

In addition, all the Supreme Court cases cited involved statewide elections and presented more compelling aspects than are presented here for not holding up the electoral process. For instance, such elections involve significantly more voters, candidates and expense than does this election where a limited number of city council and school committee seats are involved.

Since we are unconvinced that any special standard should be applied at this time and in this localized election we apply the traditional analysis and deny the motions for a stay pending appeal.

Stay denied.

Frank B. JAMES, et al., Plaintiffs, Appellants,

v.

James G. WATT, et al., Defendants, Appellees.

No. 83-1026.

United States Court of Appeals,
First Circuit.

Argued June 7, 1983.
Decided Aug. 24, 1983.

Individual Indians brought action challenging past transfers of Indian lands by their tribe and by individual tribe members. The United States District Court for the District of Massachusetts, John J. McNaught, J., granted defendants' motion for summary judgment, and plaintiffs appealed. The Court of Appeals, Breyer, Circuit Judge, held that: (1) plaintiffs could not sue as individuals under the Indian Nonintercourse Act; (2) Massachusetts statutes authorizing transfers were not preempted by the Indian commerce clause; and (3) district court did not abuse its discretion in denying plaintiffs' motion to amend their pleadings after they lost their case.

Affirmed.

1. Indians ⟹27(5)

Indians who sued as individuals, rather than as representatives of their tribe, and who failed to name their tribe as a plaintiff in the suit could not sue under the Indian Nonintercourse Act to claim that certain past conveyances of land by their tribe or by individual Indians were invalid. 25 U.S.C.A. § 177.

2. Indians ⟹33

The Indian commerce clause did not invalidate Massachusetts statutes which permitted certain conveyances of Indian land. U.S.C.A. Const. Art. 1, § 8, cl. 3.

3. Federal Civil Procedure ⟹224

In action in which individual Indians challenged past conveyances of Indian lands, district court did not abuse its discretion in denying their motion to amend their complaint to add their tribe as a party plaintiff after they had lost their case, particularly in absence of reasons to explain why they did not move to amend sooner.

Robert C. Hahn, Boston, Mass., with whom William A. Hahn, Boston, Mass., and Hahn & Matkov were on brief, for plaintiffs, appellants.

Allan van Gestel, Boston, Mass., with whom Andrew S. Hogeland, and Goodwin, Procter & Hoar, Boston, Mass., were on brief, for defendants, appellees Christopher S. Look, Jr., as Sheriff of Dukes County, Beverly W. King, as Register of Deeds for Dukes County, and Alexander D. Forger, Trustee.

EXHIBIT A

Thomas N. Tureen, with whom Tureen & Margolin, Portland, Me., was on brief, for defendant, appellee Wampanoag Tribe of Gay Head.

Thomas R. Kiley, Asst. Atty. Gen., Boston, Mass., with whom Francis X. Bellotti, Atty. Gen., and Paul R. Matthews, Asst. Atty. Gen., Boston, Mass., were on brief, for defendant, appellee Commonwealth of Mass.

Jacques B. Gelin, Attorney, Dept. of Justice, Washington, D.C., with whom Carol E. Dinkins, Asst. Atty. Gen., Washington, D.C., William F. Weld, U.S. Atty., Boston, Mass., and Anne S. Almy, Attorney, Dept. of Justice, Washington, D.C., were on brief, for defendant, appellee United States Secretary of Interior.

Before COFFIN and BREYER, Circuit Judges, and SELYA,[*] District Judge.

BREYER, *Circuit Judge.*

The plaintiffs in this case are individual Indians who claim an interest in land on Gay Head Peninsula, Martha's Vineyard, Massachusetts. In order to prevail, they must upset the present landowners' chain of title by showing that certain conveyances made many years ago by the Gay Head Indian tribe (or by individual Indians) are invalid. The district court granted summary judgment against the plaintiffs, from which they appeal. We find that the district court was correct.

A

[1] The plaintiffs' initial argument is based upon the Indian Nonintercourse Act (the INA)—a federal statute that provides:

> No purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian nation or tribe of Indians, shall be of any validity in law or equity, unless the same be made by treaty or convention entered into pursuant to the Constitution.

25 U.S.C. § 177. The plaintiffs argue that the relevant conveyances were not made pursuant to a "treaty or convention," that Massachusetts law could not authorize what the INA forbade, and that the conveyances are therefore invalid. The district court correctly rejected this argument, however, on the ground that the plaintiffs sued as individual Indians. The plaintiffs did not seek to represent the tribe, nor did they name the tribe as a plaintiff in the suit. We are not certain why they did not do so. But we know that the Gay Head Indian tribal government earlier filed a related suit by, and on behalf of, the Gay Head tribe; and we believe that plaintiff Indians here are dissidents who disapprove of the way that suit is being handled. This litigation strategy apparently played a role in the framing of their complaint.

Regardless, this court has held that the INA was designed to protect the land rights only of *tribes;* that the INA therefore granted a cause of action to tribes; and that individual Indians could not assert INA rights on their own behalf. *See Epps v. Andrus,* 611 F.2d 915, 917 (1st Cir.1979); *Mashpee Tribe v. New Seabury Corp.,* 592 F.2d 575, 581 (1st Cir.1979), *cert. denied,* 444 U.S. 866, 100 S.Ct. 138, 62 L.Ed.2d 90 (1979); *see also Mashpee Tribe v. Watt,* 542 F.Supp. 797, 803 (D.Mass.1982), *aff'd,* 707 F.2d 23 (1st Cir.1983); *Oneida Indian Nation v. County of Oneida,* 434 F.Supp. 527, 537 (N.D.N.Y.1977); *Narragansett Tribe of Indians v. Southern Rhode Island Land Development Corp.,* 418 F.Supp. 798, 803 (D.R.I.1976). In *Epps v. Andrus,* 611 F.2d at 917 (original in ital.), we explicitly stated that to invoke the INA a plaintiff "must show that . . . it is or represents an Indian 'tribe' within the meaning of the Act. . . ." That holding is *stare decisis* in this circuit, and we shall not reexamine it. Thus, plaintiffs' claim, insofar as it is based on the INA, must fail.

B

[2] The plaintiffs raised another argument below, which they now press strongly on appeal. They argue that the Indian Commerce Clause, U.S. Const. art. 1, § 8,

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[*] Of the District of Rhode Island, sitting by designation.

automatically (in and of itself, without the INA) invalidated the Massachusetts statutes permitting the conveyances in question, see 1870 Mass.Acts ch. 213; 1869 Mass.Acts ch. 463; 1862 Mass.Acts ch. 184, and that the conveyances were therefore invalid. The Indian Commerce Clause grants to Congress the "Power ... To regulate Commerce ... with the Indian Tribes...." In the plaintiffs' view, this grant of power is exclusive, and took from Massachusetts *all* power to legislate in the area of Indian affairs.

Plaintiffs' proposed interpretation of the *Indian* Commerce Clause closely resembles James Madison's view of the *Interstate* Commerce Clause, U.S. Const. art. 1, § 8. Madison, believing it essential that states not be able to restrict trade among themselves, *The Federalist* No. 42 (J. Madison); 3 *The Records of the Federal Convention of 1787* at 478, 547–48 (M. Farrand ed. 1937), apparently thought that the mere existence of the Clause precluded state legislation regulating interstate commerce, regardless of whether Congress chose to exercise its own power to legislate. *See id.*; L. Tribe, *American Constitutional Law* § 6–3 (1978); Eule, *Laying the Dormant Commerce Clause to Rest*, 91 Yale L.J. 425, 431 (1982); *cf.* Tribe, *Toward A Syntax of the Unsaid: Construing the Sounds of Congressional and Constitutional Silence*, 57 Ind.L.J. 515, 521 (1982) [hereinafter cited as "Tribe, *Silence*"]. In *Gibbons v. Ogden*, 22 U.S. (9 Wheat.) 1, 209, 6 L.Ed. 23 (1824), Chief Justice Marshall, following the Madisonian interpretation, suggested that the Clause not only grants Congress regulatory power over interstate commerce, but also "excludes, necessarily, the action of all others that would perform the same operation on the same thing." Soon after Chief Justice Marshall's tenure, however, the Supreme Court began to expand the area in which states were free to act. *See, e.g., The License Cases*, 46 U.S. (5 How.) 504, 573–74, 12 L.Ed. 256 (1847); L. Tribe, *American Constitutional Law* § 6–3. And, modern cases use a particularized analysis, weighing the strength of relevant state and federal interests, to determine whether or not the Interstate Commerce Clause forbids a particular state law as an unconstitutional "burden" on interstate commerce. *See, e.g., Cities Service Gas Co. v. Peerless Oil & Gas Co.*, 340 U.S. 179, 186–87, 71 S.Ct. 215, 219–20, 95 L.Ed. 190 (1950); *Southern Pacific Co. v. Arizona*, 325 U.S. 761, 770–71, 65 S.Ct. 1515, 1521, 89 L.Ed. 1915 (1945); L. Tribe, *American Constitutional Law* § 6–5. Thus, the strong Madison/Marshall "preemptive" view of the Interstate Commerce Clause is no longer the law of the land. *See* L. Tribe, *American Constitutional Law* §§ 6–4 to 6–26.

Similarly, in citing Chief Justice Marshall's strong, preemptive interpretation of the *Indian* Commerce Clause, plaintiffs overstate the force of the Clause under modern Indian law. In *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 561, 8 L.Ed. 483 (1832), for example, the Chief Justice wrote that "[t]he whole intercourse between the United States and this [Cherokee] nation, is, by our constitution and laws, vested in the government of the United States." *See also Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 19, 8 L.Ed. 25 (1831) (Marshall, C.J.). Nevertheless, despite similar dicta in some later cases, *see, e.g., Oneida Indian Nation v. County of Oneida*, 414 U.S. 661, 670, 94 S.Ct. 772, 778, 39 L.Ed.2d 73 (1974), Supreme Court decisions since Chief Justice Marshall's time have generally rejected the concept that the Clause automatically and necessarily preempts all state laws dealing with Indians. Instead, these decisions have tended to expand the area in which states may legislate. *See, e.g., Rice v. Rehner*, — U.S. —, — — —, 103 S.Ct. 3291, 3298–01, 77 L.Ed.2d 961 (1983); *Moe v. Confederated Salish & Kootenai Tribes of the Flathead Reservation*, 425 U.S. 463, 481 n. 17, 96 S.Ct. 1634, 1645 n. 17, 48 L.Ed.2d 96 (1976); *Organized Village of Kake v. Egan*, 369 U.S. 60, 74–76, 82 S.Ct. 562, 570–571, 7 L.Ed.2d 573 (1962); *United States v. McGowan*, 302 U.S. 535, 539, 58 S.Ct. 286, 288, 82 L.Ed. 410 (1938); *New York v. Dibble*, 62 U.S. (21 How.) 366, 370, 16 L.Ed. 149 (1858). And, when the Supreme Court has found state legislation preempted, it has used an analysis that balances the interests of the federal, state, and tribal authorities, rather than any rule that automatically preempts state statutes on the basis of the Clause. *See, e.g., New Mexico v. Mescalero Apache Tribe,* — U.S. —, —, 103 S.Ct. 2378, 2384, 76 L.Ed.2d 611 (1983); *Ramah Navajo School Board, Inc. v. Bureau of Revenue,* 458 U.S. 832, 837, 102 S.Ct. 3394, 3398, 73 L.Ed.2d 1174 (1982); *White Mountain Apache Tribe v. Bracker,* 448 U.S. 136, 145, 100 S.Ct. 2578, 2584, 65 L.Ed.2d 665 (1980); *McClanahan v. Arizona State Tax Commission,* 411 U.S. 164, 172, 93 S.Ct. 1257, 1262, 36 L.Ed.2d 129 (1973). This shift in the method of analysis is fatal to plaintiffs' case for one simple reason: plaintiffs' only hope of success rests upon a strict, absolutist view of Indian Commerce Clause preemption. Any "interest balancing" approach—in view of the enactment of the INA—leads to the conclusion that the Indian Commerce Clause does not preempt the application of the relevant Massachusetts laws to this case.

To see why this is so, first imagine the circumstances in which plaintiffs' preemption argument would be strongest—namely, if Congress had never enacted the INA. Even under those circumstances, one could make a strong argument for the validity of the state statutes—an argument based upon the special, bifurcated nature of Indian land title. That argument would run as follows:

As the Supreme Court noted in *Oneida Indian Nation v. County of Oneida,* 414 U.S. at 667, 94 S.Ct. at 777, American courts recognize two distinct levels of ownership in Indian lands: fee title and Indian title. The common-law fee title passed to the European sovereign at discovery, and it could be transferred by him to his grantees. The fee title in lands that the British king retained passed to the individual states at the time of the revolution. These states, in turn, ceded to the central government their claims to the western territories beyond their present boundaries. Title to Indian lands within their borders, however, was retained by the thirteen original states. (To the extent that our comment in *Epps v. Andrus,* 611 F.2d at 916 suggests the contrary, it is withdrawn.) *See Oneida Indian Nation v. County of Oneida,* 414 U.S. at 670, 94 S.Ct. at 778; *Seneca Nation v. Christy,* 162 U.S. 283, 16 S.Ct. 828, 40 L.Ed. 970 (1896); *United States v. Franklin County,* 50 F.Supp. 152, 156 (N.D.N.Y.1943); Clinton & Hotopp, *Judicial Enforcement of the Federal Restraints on Alienation of Indian Land: The Origins of the Eastern Land Claims,* 31 Me.L.Rev. 17, 36 & n. 73 (1979); Dwyer, *Land Claims Under the Indian Nonintercourse Act, 25 U.S.C. § 177,* 7 B.C.Env.Aff.L.Rev. 259, 265 n. 41 (1978); *cf.* M. Jensen, *The Articles of Confederation* 198–238 (1966) (historical background to land cessions).

Indian title, which gave Indians a "right of occupancy," coexisted with the fee title. This "right of occupancy" was legally significant in several ways. For one thing, only the sovereign (the king, the state, the federal government) could destroy this right; and, as long as the Indians retained it, ownership of the fee title brought with it no present right of possession. Rather, the fee owner "received a contingent future interest which ripened into a fee simple" only when the Indians abandoned their possessory interest (or when the sovereign, holding fee title, took that *possessory* interest). F. Cohen, *Handbook of Federal Indian Law* 321 n. 372 (1942). For another thing, the courts did not otherwise recognize transactions involving this "right of occupancy." Because the owner of fee title held the "exclusive right to extinguish" the "right of occupancy", *Johnson v. McIntosh,* 21 U.S. (8 Wheat.) 543, 585, 5 L.Ed. 681 (1823), efforts by Indians to convey their possessory rights were not recognized by American courts. Instead, one who purchased such rights from the Indians "incorporate[d] himself with them;" if the Indians chose to take their rights back, as far as the U.S. courts were concerned, that was up to them. *Id.* at 593. All these, and related rules, were explained by Chief Justice Marshall in *Johnson v. McIntosh,* and were reaffirmed in subsequent cases. *See, e.g., Oneida Indian Nation v. County of Oneida,* 414

U.S. at 667–74, 94 S.Ct. at 777–80; *Tee-Hit-Ton Indians v. United States,* 348 U.S. 272, 279–81, 75 S.Ct. 313, 317–18, 99 L.Ed. 314 (1955); *United States v. Santa Fe Pacific Railroad Co.,* 314 U.S. 339, 345–46, 62 S.Ct. 248, 251, 86 L.Ed. 260 (1941); *United States v. Shoshone Tribe of Indians,* 304 U.S. 111, 115–16, 58 S.Ct. 794, 797–98, 82 L.Ed. 1213 (1938); *Cramer v. United States,* 261 U.S. 219, 229–30, 43 S.Ct. 342, 344–45, 67 L.Ed. 622 (1923); *Butts v. Northern Pacific Railroad,* 119 U.S. 55, 66–67, 7 S.Ct. 100, 104–105, 30 L.Ed. 330 (1886); *Beecher v. Wetherby,* 95 U.S. 517, 525, 24 L.Ed. 440 (1877); *Mitchel v. United States,* 34 U.S. (9 Pet.) 711, 9 L.Ed. 283 (1835) (Marshall, C.J.); *Worcester v. Georgia,* 31 U.S. (6 Pet.) 515, 8 L.Ed. 483 (1832) (Marshall, C.J.); *Cherokee Nation v. Georgia,* 30 U.S. (5 Pet.) 1, 8 L.Ed. 25 (1831) (Marshall, C.J.); *Jackson v. Porter,* 13 F.Cas. 235, 240 (N.D.N.Y.Cir.Ct.1825) (No. 7,143).

Against this background, one might argue that the Massachusetts statutes giving Indians fee title and the power to alienate land, were not efforts to *take* land rights *from* the Indians, but rather efforts to *convey* the state's fee title *to* them and thereby to grant them their lands in fee simple absolute. These statutes may have been Massachusetts' own attempt to undo its earlier cases and statutes limiting the rights of Indians in their aboriginal lands to possessory title and invalidating conveyances of that title. *See* 1701 Mass.Prov.Laws ch. 11; *The Book of the General Lavves and Libertyes Concerning the Inhabitants of the Massachusets [1660],* at 161 (statute enacted 1633), *reprinted in The Colonial Laws of Massachusetts* (1889 ed.); *City of Lynn v. Inhabitants of Nahant,* 113 Mass. 433, 449 (1873); *Commonwealth v. City of Roxbury,* 75 Mass. (9 Gray) 451, 478–79 (1857); *Brown v. Inhabitants of Wenham,* 51 Mass. (10 Met.) 495, 498 (1845); *Clark v. Williams,* 36 Mass. (19 Pick.) 499, 500–01 (1837). Thus, these statutes might be seen as part of an effort to remove the legal disabilities of the Indians and grant them full citizenship—as part of an effort that included the passage of an 1869 statutory provision granting Indians "all the rights, privileges and immunities" of state citizens, 1869 Mass. Acts ch. 463, § 1, and the ratification by Massachusetts of the Fourteenth Amendment in 1867.

We need not decide whether this explanation of the Massachusetts statutes would have been sufficient to render them constitutional, despite the Indian Commerce Clause, in a hypothetical world without the INA. One could still have attacked them as unconstitutional by arguing that, regardless of the motives of the Massachusetts legislature, the statutes allowed the Indians to convey title to their lands; that the Indian Commerce Clause was designed to place in the hands of the federal government the decision of whether to allow conveyances by Indians; and that the Clause therefore "froze" the land rights of the various Indian tribes until either they voluntarily abandoned their lands or Congress voted to permit a conveyance. One could note, as well, that the question of "when the Indians are prepared to exercise the privileges and bear the burdens of one *sui juris*" is a matter that "rests with Congress." *United States v. Nice,* 241 U.S. 591, 598, 36 S.Ct. 696, 698, 60 L.Ed. 1192 (1916). On the other hand, one could have argued, in support of the statutes, that Massachusetts was entitled under its general police powers to provide a fair, expeditious, and judicially recognized mechanism for a tribe to convey its possessory rights to its own members if it chose to do so, and that Massachusetts was entitled as fee owner to transfer its title to such members of the tribe. One might add that Massachusetts' primary objective was apparently to help integrate into the non-Indian community those individual Indians who wished to do so, and that it did this without interfering with the area of primary federal concern—the "commerce" between the "settlers" and the semi-autonomous tribes. We do not pretend to know who would have won this hypothetical argument. We wish only to point out that—even without the INA—the Massachusetts statutes are not *clearly* unconstitutional; rather, the outcome of the argument is uncertain. *See generally* Tribe, *Silence, supra,* (exploring difficulties of interpreting congressional failure to legislate).

Next consider how the relevant features of the constitutional argument change once one takes account of the fact that Congress passed and modified the INA, 1 Stat. 137 (1790); 4 Stat. 729 (1834), to allow Indian tribes to invalidate transfers of (fee or Indian) title to their lands, if the transfers were made without the specific approval of the federal government. For one thing, the constitutional question itself changes. The INA clearly preempts state statutes that conflict with its terms. But, the relevant question now is whether the Indian Commerce Clause preempts state statutes *outside* the INA's scope. For another thing, the INA reflects a congressional judgment about the weight of the relevant federal, state, and tribal interests—interests that the Supreme Court has instructed us to balance to determine whether the Indian Commerce Clause preempts a particular state enactment. *See Rice v. Rehner*, — U.S. at ———, 103 S.Ct. at 3294-3301; *New Mexico v. Mescalero Apache Tribe*, — U.S. at ———, 103 S.Ct. at 2384-86; *Ramah Navajo School Board, Inc. v. Bureau of Revenue*, 458 U.S. at 837, 102 S.Ct. at 3398; *White Mountain Apache Tribe v. Bracker*, 448 U.S. at 145, 100 S.Ct. at 2584. That congressional judgment helps us conclude that this "balance" tilts decisively in favor of the application of the state laws. First, the terms of the Indian Commerce Clause itself grant the federal government the authority to regulate commerce "with the Indian *tribes*." Although the federal government may choose to supervise transactions involving individual Indians, *see, e.g., United States v. Nice*, 241 U.S. at 600, 36 S.Ct. at 699, the modified (1834) INA indicates that Congress consciously chose not to do so, but, rather, to limit its supervision under the INA to transactions and lawsuits involving the tribes themselves. These facts suggest that the federal interest in nontribal transactions is comparatively small. *Cf. New Mexico v. Mescalero Apache Tribe*, — U.S. at —, 103 S.Ct. at 2386 (to find whether a federal interest exists, examine whether the interest is "reflected in federal law").

Second, where individual Indians are involved, the state has a valid interest in maintaining the stability of land transactions entered into according to its laws, in treating all of its citizens equally, and in providing the same property rights to all of its citizens. These factors support Massachusetts' power to act in the area.

Third, the interest of the tribe itself is smaller *outside the area that the INA protects*. In this case, application of the state statutes against the plaintiffs will conflict with no claim that the tribe itself might assert, and will not "interfere with the Tribe's ability to exercise its sovereign functions." *Ramah Navajo School Board, Inc. v. Bureau of Revenue*, 458 U.S. at 837, 102 S.Ct. at 3398. Given the lack of any substantial federal or tribal interests that significantly support preemption, "the State interests at stake are sufficient to justify the assertion of State authority." *New Mexico v. Mescalero Apache Tribe*, — U.S. at —, 103 S.Ct. at 2386.

Finally, even though "congressional intent" is not the "sole touchstone" of preemption analysis, *New Mexico v. Mescalero Apache Tribe*, — U.S. at —, 103 S.Ct. at 2386, it does support the enforcement of the state statutes in this case. The original enactment of the INA in 1790 suggests that the first Congress did not believe that the Indian Commerce Clause—in and of itself—prohibited state laws validating Indian land conveyances. Otherwise, why would the INA have been necessary? The views and actions of the first Congress, made up of many of the Constitution's framers, are entitled to considerable weight in cases like this of constitutional interpretation. *See Wisconsin v. Pelican Insurance Co.*, 127 U.S. 265, 297, 8 S.Ct. 1370, 1377, 32 L.Ed. 239 (1888), *quoted with approval in Marsh v. Chambers*, — U.S. —, —, 103 S.Ct. 3330, 3334, 77 L.Ed.2d 1019 (1983). Moreover, Congress' modification of the INA in 1834, limiting its applicability to tribal conveyances, suggests that Congress believed that similar activities beyond the scope of the INA did not "stand[ ] as an obstacle to the accomplishment," *Hines v. Davidowitz,* 312 U.S. 52, 67, 61 S.Ct. 399, 404, 85 L.Ed. 581 (1941), of its objectives. We should hesitate to find the federal interest in activities outside the scope of the statute "weighty" enough to warrant preemption in the face of such a contrary congressional suggestion. *See id.* at 70, 61 S.Ct. at 406 ("object sought to be attained" by Congress is "important in considering ... whether supreme federal enactments preclude enforcement of the state laws"); *cf. Prudential Insurance Co. v. Benjamin,* 328 U.S. 408, 66 S.Ct. 1142, 90 L.Ed. 1342 (1946) (Congress can limit preemptive scope of Interstate Commerce Clause); *Southern Pacific Co. v. Arizona,* 325 U.S. 761, 769, 65 S.Ct. 1515, 1520, 89 L.Ed. 1915 (1945) (same). *Compare Durousseau v. United States,* 10 U.S. (6 Cranch.) 307, 314, 3 L.Ed. 232 (1810) (statute affirmatively describing jurisdiction will "imply a negative" as to jurisdiction not described) *with Hines v. Davidowitz,* 312 U.S. at 74, 61 S.Ct. at 408 (all state regulation preempted where Congress planned for "one uniform national registration system"). In sum, what we can infer about congressional intent supports the conclusion we reached by "weighing the interests"—that, at least after the enactment of the INA, the Indian Commerce Clause does not invalidate the Massachusetts statutes here in question. Since plaintiffs here cannot assert a claim that falls within the scope of the INA (see Part A *supra*), and since the Indian Commerce Clause does not offer an independent ground for holding these conveyances invalid, the district court's dismissal of their claim was proper.

C

[3] After their claims were denied below, plaintiffs moved to amend their complaint, *inter alia,* to include the Gay Head Tribe as a party plaintiff. The district court denied this motion as untimely. The plaintiffs appeal this ruling as well, but we find no basis for reversal. A motion to amend is normally made before judgment. Sometimes a later effort to amend might be proper. *See* 6 C. Wright & A. Miller, *Federal Practice and Procedure* § 1489 (1971). But here plaintiffs waited until they lost their case as individuals before moving to include the tribe as plaintiff *and* they offered no reason to explain why they did not move to amend sooner. Accordingly, their motion was properly denied. *Hayes v. New England Millwork Distributors, Inc.,* 602 F.2d 15, 19–21 (1st Cir.1979); *Ondis v. Barrows,* 538 F.2d 904, 909 (1st Cir.1976); *see United States Labor Party v. Oremus,* 619 F.2d 683, 692 (7th Cir.1980); *Jackson v. American Bar Association,* 538 F.2d 829, 833 (9th Cir.1976); *Landon v. Northern Natural Gas Co.,* 338 F.2d 17, 20 (10th Cir.1964), *cert. denied,* 381 U.S. 914, 85 S.Ct. 1529, 14 L.Ed.2d 435 (1965).

We have no reason to believe that the plaintiffs' failure to amend earlier was inadvertent. For one thing, their attorney here is the same attorney who handled the appeal in *Epps v. Andrus, supra.* Therefore, he was aware of the need to assert that a plaintiff "is or represents an Indian 'tribe.'" *Id.* at 917. For another thing, as previously mentioned, other Indians have brought a suit on behalf of the Gay Head tribe to obtain land on the peninsula, and they are presently in the process of settling their suit. The plaintiffs here disagreed with the plaintiffs in the other suit, but they evidently did not, or could not, name the tribe as a party plaintiff in this case because the other plaintiffs control the tribe. These facts suggest to us that the pleadings in this case were drawn as part of a litigating strategy and plaintiffs showed the district court no reason why they should not be bound by the consequences of that strategy. In any event, the issue at stake—whether plaintiffs here have a right to upset the settlement entered into by the tribe and its other members—is more appropriately before us in another case appealed to this court, *Wampanoag Tribal Council of Gay Head, Inc. v. Town of Gay Head,* No. 83–1163, scheduled to be heard this September.

Under these circumstances, we find no abuse of the district court's discretionary power in its denial of plaintiffs' motion to amend the pleadings. To require the district court to permit amendment here would allow plaintiffs to pursue a case to judgment and then, if they lose, to reopen the case by amending their complaint to take account of the court's decision. Such a practice would dramatically undermine the ordinary rules governing the finality of judicial decisions, and should not be sanctioned in the absence of compelling circumstances. *See* 6 C. Wright & A. Miller, *supra,* at § 1489.

Plaintiffs' other claims are without merit, and were properly dismissed.

Affirmed.

UNITED STATES of America,
Plaintiff, Appellee,

v.

177.51 ACRES OF LAND, MORE OR LESS, SITUATED IN the TOWNS OF EASTHAM, TRURO, AND WELLFLEET, COUNTY OF BARNSTABLE, COMMONWEALTH OF MASSACHUSETTS, et al., Defendants, Appellees.

Sallie E. Johnson Lappanen, et al.,
Defendants, Appellants.

No. 83-1043.

United States Court of Appeals,
First Circuit.

Argued June 9, 1983.

Decided Aug. 29, 1983.

The United States District Court for the District of Massachusetts, Andrew A. Caffrey, Chief Judge, adopting report of commission, awarded compensation for 12 tracts of land condemned by United States to expand national seashore, and landowners brought consolidated appeal. The Court of Appeals, Bownes, Circuit Judge, held that: (1) Court of Appeals was without jurisdiction to hear appeal concerning tract over which district court had not rendered final judgment; (2) tract was properly valued on basis that town had no obligation to maintain road; (3) valuation of tracts gave due consideration to each individual case and was not clearly erroneous; (4) commission properly analyzed each tract on its own and deducted only those road improvement and utility costs necessary to serve individual tract; (5) commission properly valued certain tracts on basis of joint development; (6) evidence supported finding that tract was best developed as single homesite; and (7) commission did not err in valuing tracts as landlocked.

Affirmed in part and remanded in part.

1. Eminent Domain ⇨262(1)

Role of Court of Appeals in condemnation case is limited to reviewing determinations of district court in its adoption, modification, or rejection of commissioners' report and does not constitute review of determinations of commission as such. Fed. Rules Civ.Proc. Rule 71A(h), 28 U.S.C.A.

2. Eminent Domain ⇨253(1)

Where district court had not rendered final judgment adopting, modifying, or rejecting relevant commissioners' report with regard to one tract of land involved in condemnation action, Court of Appeals had no jurisdiction to entertain appeal with respect to such tract. Fed.Rules Civ.Proc. Rule 71A(h), 28 U.S.C.A.

3. Courts ⇨99(1)
Eminent Domain ⇨243(3)

Where Court of Appeals had decided in previous condemnation case that town had no obligation to maintain road, and landowners in subsequent condemnation action presented no new analysis concerning road, doctrine of stare decisis was properly invoked to rule against landowners' claim that town was responsible for road, notwithstanding that landowners were not in-no evidence that the tire rule would effectively cut costs at all seems clearly incorrect. The inference is compelling that requiring all drivers to use low cost tires will save them money.

The district court was concerned that a tire rule is not a reasonable approach to controlling the cost crisis in auto racing. "Alternative approaches to the cost crisis could include increased purses, objective specifications restricting engine performance, or some more reasonable approach to tire specifications." 560 F.Supp. at 607. If cost cutting were the only goal of the tire rule, a less restrictive approach might have been devised to control tire costs. We have already described one such theoretically possible approach, *supra*. However, there appears to be no "more reasonable approach to tire specifications" if the goal is to have all drivers racing on a single tire compound.

To the district court's suggestion that costs be controlled by limiting engine performance, the answer seems to be that a number of such steps have been taken. Aluminum block engines have been prohibited, a gear rule was adopted, fuel injection was banned, and carburetor size was specified. The fact that the tire rule was not the sole element of cost control introduced, and that it was felt that such a rule was still needed in light of these other measures, indicates that the rule was adopted for bona fide reasons and that the cost savings motive was not merely a smoke screen to cover up improper designs by Hoosier. (We have already noted, additionally, the adoption of tire rules at some other, unrelated tracks.)

We cannot be confident that increased purses would solve the cost problem either. There was testimony to the effect that the tire rule would not greatly affect the order of finish among drivers, but that it would make the races "tighter" and "cheaper." One of the prime concerns in adopting a tire rule was to keep the field of participants from dwindling. If increasing costs were "controlled" only by offsetting them with increased purses, then a number of racers might still be forced to leave the sport for lack of sufficient winnings. Little or no "savings" would be passed on to them. This is so even though the whole field "shares" the purse because the majority of winnings still goes to the top finishers. The goal of preserving the spectacle of a large field of participants and promoting tighter races could not clearly be achieved by simply increasing the purses. And, the record does not show that the sport could bear increased purses, which presumably would have to be financed by either higher priced tickets or increased ticket sales.

We are satisfied that the conduct defendants engaged in was justified as a reasonable way to regulate and improve modified class auto racing, and that it did not in all the circumstances have anti-competitive ramifications so severe as to warrant a finding that it was illegal.

For the foregoing reasons the judgment of the district court is reversed.

Frank B. JAMES, et al., Plaintiffs, Appellants,

v.

Francis X. BELLOTTI, et al., Defendants, Appellees.

No. 83-1878.

United States Court of Appeals,
First Circuit.

Argued April 6, 1984.

Decided May 10, 1984.

Individual members or decedents of Indian tribe brought state court action seeking injunction against signing of settlement of action involving Indian land claims. Action was removed to federal court. The

EXHIBIT B

United States District Court for the District of Massachusetts, John J. McNaught, J., denied motion for remand and request for injunctive relief, and appeal was taken. The Court of Appeals, Bownes, Circuit Judge, held that: (1) although not appealable by itself, refusal to remand was reviewable in connection with interlocutory appeal from denial of injunction; (2) there was no adequate basis for federal jurisdiction; and (3) since federal court in the pending action had acquired continuing in rem jurisdiction no state court could deprive the district court of its exclusive power to adjudicate the land claims and if the state court attempted to do so it could properly be enjoined.

Reversed and remanded.

1. **Federal Courts 🔑573, 770**

Denial of an injunction is an appealable interlocutory order, and refusal to remand the removed case to state court, though not directly appealable by itself, was reviewable in conjunction with the interlocutory appeal. 28 U.S.C.A. § 1292(a)(1).

2. **Removal of Cases 🔑25(1)**

Existence of a federal question must be determined from the allegations in the complaint, without reference to other documents such as the petition for removal or the answer. 28 U.S.C.A. § 1441(a).

3. **Removal of Cases 🔑25(1)**

For removal purposes, the allowance of a federal claim need not be explicitly and comprehensively recited and there is nothing to prevent the court from engaging in a little statutory logic to deduce elements implicit on the face of the complaint, but the federal claim must nevertheless be substantial and identifiable. 28 U.S.C.A. § 1441(a).

4. **Removal of Cases 🔑102**

Although it was likely that state court action by individual members or descendants of Indian tribe, claiming that Tribal Counsel did not adequately represent their interest in pending federal court litigation involving Indian land claims, was part of a larger strategy involving the land claims, there was no adequate basis for federal jurisdiction as state law claims of misappropriation of name, invasion of privacy and fraud were independent of federal claims, and action was improvidently removed. 28 U.S.C.A. § 1441(a).

5. **Courts 🔑489(1), 508(2)**

Federal court had acquired continuing in rem jurisdiction of disputed Indian land claims and no state court, whether purporting to exercise concurrent jurisdiction in rem or in personam, could deprive the district court of its exclusive power to adjudicate those land claims and if state court sought to enjoin the proceedings or court-approved settlement thereof the district court could properly enjoin the state court action. 28 U.S.C.A. § 2283.

6. **Courts 🔑507, 508(1)**

Federal and state courts do not interfere with or attempt to restrain each other's proceedings.

7. **Courts 🔑508(1)**
Federal Courts 🔑20

Under federal Anti-Injunction Act there is no requirement that an independent jurisdictional basis be shown for a federal court to stay state court proceedings in aid of federal jurisdiction or to protect or effectuate federal judgments as jurisdiction to do so is ancillary to jurisdiction in underlying case. 28 U.S.C.A. § 2283.

8. **Courts 🔑508(1)**

The "necessary in aid of" language in exception to federal Anti-Injunction Act for injunctions in aid of federal court jurisdiction or to protect or effectuate federal judgments incorporates the historical exception for cases in which a federal court obtains in rem jurisdiction prior to a state-court suit but it is not necessarily limited to in rem actions and is meant to give sufficient flexibility such that a federal court may deal adequately with the situation. 28 U.S.C.A. § 2283.

See publication Words and Phrases for other judicial constructions and definitions.

9. Compromise and Settlement ⚖51

Fact that proposed settlement of Indian land claims was still pending, apparently waiting for congressional and state approval, did not prevent federal district court from issuing and order provisionally approving the settlement, which order would support a subsequent protective injunction against state court proceedings. 28 U.S.C.A. § 2283.

William A. Hahn, Boston, Mass., with whom Robert C. Hahn, and Hahn & Matkov, Boston, Mass., were on brief, for appellants.

Paul R. Matthews, Asst. Atty. Gen., Boston, Mass., with whom Francis X. Bellotti, Atty. Gen., Thomas R. Kiley, Asst. Atty. Gen., Robert J. Muldoon, Jr., and Sherin & Lodgen, Boston, Mass., were on brief, for appellees.

Before BOWNES, ALDRICH and BREYER, Circuit Judges.

BOWNES, Circuit Judge.

This is the fourth action in which appellants have appealed adverse determinations from the United States District Court for the District of Massachusetts in connection with the Gay Head Indian land claims. The underlying litigation began in 1974, when the Wampanoag Tribal Council of Gay Head, Inc. (Tribal Council) filed suit against the Town of Gay Head and its selectmen, asserting land claims of the Gay Head Indians on federal constitutional and statutory grounds. The Gay Head Tribe was joined as a party plaintiff, and the Attorney General of Massachusetts and the Gay Head Taxpayers' Association intervened as parties defendant. *Wampanoag Tribal Council of Gay Head, Inc. v. Town of Gay Head,* No. 74-5826 (D.Mass.) [*Wampanoag Tribal Council*]. Appellants in the present action, Frank James and Thelma Weissberg, are individual members or descendants of the Gay Head Tribe who, with forty-one others, sought to intervene in *Wampanoag Tribal Council* in 1981 on the ground that the Tribal Council did not adequately represent their interests. Later, however, they apparently withdrew their motion to intervene.

In the second case, James and Weissberg, along with some one hundred other Gay Head Indians, also sued in the district court, claiming title to the same land involved in *Wampanoag Tribal Council* on virtually identical federal grounds. The district court granted summary judgment against them, and denied their post-judgment motion to amend their complaint to join the Gay Head Tribe as a party plaintiff. This court affirmed the district court's judgment on appeal, holding that individual Indians lacked standing to sue under the federal statute, 25 U.S.C. § 177, that the challenged Massachusetts statutes authorizing alienation of Indian lands were not preempted by the Indian Commerce Clause, U.S.Const. art. I, § 8, cl. 3, and that the motion to amend the complaint was properly denied. *James v. Watt,* 716 F.2d 71 (1st Cir.), *petition for cert. filed,* — U.S. —, 104 S.Ct. 546, 78 L.Ed.2d 721 (1983).

While *James v. Watt* was pending, James, Weissberg, and the other forty-one would-be intervenors in *Wampanoag Tribal Council* renewed their motion to intervene, contesting the Tribal Council's authority to represent the Gay Head Tribe and alleging their own standing as individuals to assert tribal claims. Their motion was denied, and they appealed. However, one week after this court's decision in *James v. Watt* and just prior to scheduled oral argument, appellants withdrew their appeal. *Wampanoag Tribal Council, appeal withdrawn,* No. 83-1163, (1st Cir. Sept. 1, 1983).

Meanwhile, in September, 1983, the parties in *Wampanoag Tribal Council* reached a framework settlement agreement providing that the disputed individual and tribal land claims were to be extinguished by special federal legislation and the case dismissed with prejudice. The agreement was drawn up in the form of a "Joint Memorandum of Understanding" (Joint Memo). James and Weissberg opposed the proposed settlement and challenged the validity of the Joint Memo by bringing suit against the Attorney General of Massachusetts, the Tribal Council, the Town of Gay Head, and the Gay Head Taxpayers' Association—four of the five parties to the *Wampanoag Tribal Council* litigation—in the Probate Court for Suffolk County, Massachusetts. In addition to an injunction against the signing of the Joint Memo, James and Weissberg requested a declaration that the Tribal Council's "asserted authority to speak for all members-descendants of the Gay Head Tribe" was "illegal and void" and that its intended signing of the Joint Memo "to settle all the Gay Head Tribe's tribal and individual members-descendants [sic] federal land and associated claims" exceeded the terms of its state charter. The Massachusetts court issued a temporary restraining order to prevent the signing of the Joint Memo. The defendants removed the case to federal district court, where the order was dissolved for the following reasons:

> (1) the plaintiffs should not be permitted to challenge the authority of the corporation by taking in essence the first step along the identical road which they sought to travel in *James v. Watt* and in their effort to intervene in the principal action; (2) there is no likelihood of success on the merits, in the face of the enunciation of principles in the opinion of the Circuit Court of Appeals, and plaintiffs' lack of standing as individuals; (3) and that the harm to defendants is obvious—delay in disposing of this lengthy litigation.

James v. Bellotti, No. 83–3494 (D.Mass. Nov. 14, 1983) [*James v. Bellotti I*]. James and Weissberg appealed, No. 83–1846 (1st Cir. Nov. 16, 1983). After the Joint Memo was signed on November 19 and 22, 1983, however, they withdrew their appeal (1st Cir. Nov. 22, 1983), and obtained a voluntary dismissal from the district court.

Shortly after commencing the *James v. Bellotti I* action, James and Weissberg filed the complaint in the present case, which we shall call *James v. Bellotti II*, in the Superior Court for Suffolk County. The parties are identical to those in *James v. Bellotti I*, and the requested relief, *viz.* an injunction against the signing of the Joint Memo, is the same. The causes of action in *James v. Bellotti II*, however, are framed entirely with reference to state law: it is alleged that in purporting to represent all Gay Head Indians in the Joint Memo the Tribal Council has misappropriated appellants' names, invaded their statutory privacy interests, and acted fraudulently. The case was removed to the district court, which denied appellants' motion to remand as well as their request for injunctive relief "[f]or precisely the same reasons" set out in *James v. Bellotti I*.

[1–4] The denial of an injunction is an appealable interlocutory order under 28 U.S.C. § 1292(a)(1), and the refusal to remand to the state court, though not directly appealable by itself, is reviewable in conjunction with the interlocutory appeal. *See* 1A Moore's Federal Practice ¶ 0.169[2.–3] at 706–07. In this case, the jurisdictional issue is dispositive. Removal from a state court is proper only if the district court has original jurisdiction, 28 U.S.C. § 1441(a), and the only possible ground for removal here is that the case arose under federal law, *see* 28 U.S.C. § 1331. The existence of a federal question must be determined from the allegations in the complaint, without reference to other documents such as the petition for removal or the answer. *Charles D. Bonanno Linen Service, Inc. v. McCarthy*, 708 F.2d 1, 3 (1st Cir.), *cert. denied*, — U.S. —, 104 S.Ct. 346, 78 L.Ed.2d 312 (1983). The elements of a federal claim need not be explicitly and comprehensively recited, and there is nothing to prevent a court from "engag[ing] in a little statutory logic" to deduce elements implicit on the face of the complaint, *id.* at 4, but the federal claim must nevertheless be substantial and identifiable. Against the background of protracted and repetitive litigation, it seems likely that appellants have brought this action as part of a larger strategy involving the land claims, and this we will consider in a moment. However, the complaint at least purports to raise three claims under state law—misappropriation of name, invasion of privacy, and fraud—which, conceivably, are independent of the federal claims. The state claims may well lack merit as a matter of state law, but that is another question. We see no adequate basis for federal jurisdiction, and conclude that this action was improvidently removed. At the same time, some further observations are in order:

[5, 6] Although our holding requires that this case be remanded to the state court, we do not mean to suggest that appellants may pursue further litigation without heed to the effects on the district court's jurisdiction in the connected Indian land claim cases. The district court has acquired continuing in rem jurisdiction of the disputed land claims in *Wampanoag Tribal Council*, and no state court, whether purporting to exercise concurrent jurisdiction in rem, *see Penn General Casualty Co. v. Pennsylvania*, 294 U.S. 189, 195, 55 S.Ct. 386, 389, 79 L.Ed. 850 (1935); *Kline v. Burke Construction Co.*, 260 U.S. 226, 235, 43 S.Ct. 79, 83, 67 L.Ed. 226 (1922), or in personam, *see Donovan v. City of Dallas*, 377 U.S. 408, 412–13, 84 S.Ct. 1579, 1582–83, 12 L.Ed.2d 409 (1964), may deprive the district court of its exclusive power to adjudicate those land claims. *See* 1A Moore's Federal Practice ¶ 0.214 at 23644–66. This is merely one aspect of the more general rule that federal and state courts do not interfere with or attempt to restrain each other's proceedings. *Donovan*, 377 U.S. at 412, 84 S.Ct. at 1582. It appears, however, that this is precisely what appellants are attempting to accomplish by seeking a state court injunction against the proposed settlement embodied in the Joint Memo. This they may not do and, if the state court were to seek to enjoin the district court proceedings, or a court-approved settlement thereof, the district court could properly enjoin the state court action.

[7] The federal Anti-Injunction Act, 28 U.S.C. § 2283, prohibits a federal court from granting an injunction to stay state court proceedings "except ... where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." Thus, the district court may enjoin appellants from bringing additional suits if one of the statutory exceptions applies and the normal prerequisites for injunctive relief are met. *Atlantic Coast Line Railroad Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286–87, 90 S.Ct. 1739, 1742–43, 26 L.Ed.2d 234 (1970). There is no requirement that an independent jurisdictional basis be shown; the district court's jurisdiction to issue an injunction under the exceptions in section 2283 is ancillary to its jurisdiction in the underlying case. *Dugas v. American Surety Co.*, 300 U.S. 414, 428, 57 S.Ct. 515, 521, 81 L.Ed. 720 (1937); *Southwest Airlines Co. v. Texas International Airlines, Inc.*, 546 F.2d 84, 90 (5th Cir.1977), *cert. denied*, 434 U.S. 832, 98 S.Ct. 117, 54 L.Ed.2d 93 (1977).

[8] The "necessary in aid of" language in the Anti-Injunction Act has been read as incorporating a historical exception for cases in which a federal court obtains in rem jurisdiction prior to a state-court suit. *Vendo Co. v. Lektro-Vend Corp.*, 433 U.S. 623, 641, 97 S.Ct. 2881, 2892, 53 L.Ed.2d 1009 (1977) (plurality opinion). It is not necessarily limited to in rem actions, however, and is meant "to give sufficient flexibility that a federal court, as a court of equity, may, when it has jurisdiction, deal adequately with the situation at hand." 1A Moore's Federal Practice ¶ 0.208a[2] at 2336 (citation omitted). The exception implies that "some federal injunctive relief may be necessary to prevent a state court from so interfering with a federal court's consideration or disposition of a case as to seriously impair the federal court's flexibility and authority to decide that case." *Atlantic Coast Line*, 398 U.S. at 295, 90 S.Ct. at 1747; *see also United States v. District of Columbia*, 654 F.2d 802, 809 n. 16 (D.C.), *cert. denied sub nom. Prince George's County v. United States*, 454 U.S. 1082, 102 S.Ct. 637, 70 L.Ed.2d 616 (1981).

[9] The words "protect or effectuate" in section 2283 are generally viewed as

incorporating the principles of res judicata and collateral estoppel, which come into play only when there is a final judgment or appealable order to be protected or effectuated. *International Association of Machinists & Aerospace Workers v. Nix*, 512 F.2d 125, 130 (5th Cir.1975). *But see Three J Farms, Inc. v. Plaintiffs' Steering Committee*, 659 F.2d 1332, 1335 (5th Cir.1981), *cert. denied*, 456 U.S. 936, 102 S.Ct. 1993, 72 L.Ed.2d 456 (1982) (judgment approving settlement "predictable if not assured," may support protective injunction though not entered until after injunction); *see also Commerce Oil Refining Corp. v. Miner*, 303 F.2d 125, 128 (1st Cir.1962). The proposed settlement of the land claims in *Wampanoag Tribal Council* is still pending, apparently waiting for congressional and state approval. Nothing prevents the district court from issuing an order provisionally approving the settlement, which would support a subsequent protective injunction.

It also seems that appellants might be estopped, by their failure to appeal from the denial of their motion to intervene in *Wampanoag Tribal Council*, from now claiming that they are necessary parties or that their interests were not adequately represented in that case. *See Cheyenne River Sioux Tribe of Indians v. United States*, 338 F.2d 906, 911 (8th Cir.1964), *cert. denied*, 382 U.S. 815, 86 S.Ct. 34, 15 L.Ed.2d 62 (1965). In *James v. Watt*, this court expressly observed that "the issue at stake—whether plaintiffs here have a right to upset the settlement entered into by the tribe and its other members—is more appropriately before us in [*Wampanoag Tribal Council*], scheduled to be heard this September." 716 F.2d at 77. By withdrawing their appeal a week after our decision in *James v. Watt*, and by failing to pursue their appeal in *James v. Bellotti I*, appellants may well have foreclosed their opportunity to contest the settlement in *Wampanoag Tribal Council*, with respect not only to the federal claims actually asserted but also to the pendent state claims that could have been raised. *See Harper Plastics, Inc. v. Amoco Chemicals Corp.*, 657 F.2d 939, 945–46 (7th Cir.1981).

We conclude that the district court has adequate means to prevent interference with its disposition of the *Wampanoag Tribal Council* case, regardless of the eventual outcome in *James v. Bellotti II*. Because the present case was improvidently removed, we remand to the district court with instructions to remand the case to the state court under 28 U.S.C. § 1447(c).

Reversed and remanded.

UNITED STATES of America,
Plaintiff-Appellee,

v.

George HARRIS and Angelo Mamone,
Defendants-Appellants.

Nos. 361, 362, Dockets 83–1169, 83–1170.

United States Court of Appeals,
Second Circuit.

Argued Nov. 2, 1983.

Decided April 13, 1984.

Defendants were convicted in the United States District Court for the Southern District of New York, Lloyd F. MacMahon, J., of conspiracy to distribute heroin and attempting to possess heroin with intent to distribute, and they appealed. The Court of Appeals, George C. Pratt, Circuit Judge, held that: (1) evidence, though it may have been sufficient to establish attempt to distribute heroin, was insufficient to establish the charged offense of attempt to possess with intent to distribute; (2) evidence was sufficient on the charge of conspiracy to distribute heroin; (3) proffered testimony of one defendant's parole officer and out-of-state attorney that defendant had told them that the Government was trying to

PREPARED STATEMENT OF THE PENOBSCOT INDIAN NATION
ON BEHALF OF
THE GAY HEAD WAMPANOAG SETTLEMENT ACT OF 1985

Good afternoon, Mr. Chairman. My name is Priscilla Attean and I am here today representing Governor Tim Love and the Penobscot Indian Nation of Maine. On behalf of Governor Love and the Penobscot Indian Nation, I would like to thank you for this opportunity to give testimony in support of the Gay Head Settlement Legislation. The Gay Head Tribe has long been recognized by the Penobscot people.

As one of the first tribes in the United States to settle it's claim through a Congressionally sanctioned negotiated settlement, it gives the Penobscot Nation extreme pleasure to come here today as a Federally Recognized Tribe, with an ever developing reservation and what we consider to be a sound working relationship with both the Federal Government and the State of Maine. As I am sure you recall, these things do not come easily. Our tribe was in court for over seven years, our settlement took over three years to negotiate, and Congress took another period of months to enact the settlement legislation into law.

In looking back over the course of the last few years, the Penobscot Indian Nation can honestly state, that despite a few minor problems, the settlement Act has worked very well for us and we in no way regret our decision to go for a negotiated settlement of our claim. One of the reasons our relationship with the State of Maine has developed as well as it has, may well be, the fact that Congress and the Federal Government, while providing unquestionably necessary assistance and support, respected the Tribe's right to neogtiate and arrive at a mutually acceptable solution to its claim. It was this negotiation process and the Federal endorsement of our position that encouraged the State of Maine to respect the sovereign rights of the Penobscot Nation despite extreme political pressure to do otherwise.

Our brothers at Gay Head have also undertaken many of the same hard bargaining sessions and in and out of court arguments that the Penobscots faced only a few years ago. We therefore strongly encourage this committee and the Congress of the United States to provide the Gay Head Tribe with the same technical assistance and federal encouragement that they so graciously gave to our Tribe when we were in their position. It is our understanding that the Gay Head Settlement has received the overwhelming endorsement of Gay Head people and is supported by the duly elected goverment of the Gay Head Community. The Gay Head Tribe supports this legislation. We therefore ask this committee to recognize their sovereign right to make these decisions and support them in their efforts to have their settlement enacted into law at the earliest possible time.

This is not to state that we do not wish to see this Committee and other representatives of the Federal government work to improve the Gay Head position in the settlement itself should such efforts prove to be necessary. We instead suggest that any such efforts should be undertaken jointly by this Committee and the Gay Head tribe if the Tribe's sovereign right to make such an important decision is to be respected. We feel it is also relevant to point out that as is the case at Gay Head, the Penobscot Tribe ahd within its membership a small group of individuals who were opposed to a negotiated settlement of our claim. As is the case at Gay Head, however, this group was a small minority and while we made every effort to address their specific concerns we felt and continue to feel that the wishes of the overwhelming majority of tribal members must be adhered to. It is the Democratic process clear and simple.

Again, on behlaf of the Penobscot Nation, I thank you for this opportunity to testify here today.

TESTIMONY OF UNITED SOUTH & EASTERN TRIBES

BEFORE THE SENATE SELECT COMMITTEE
ON INDIAN AFFAIRS REGARDING S. 1452

April 9, 1985

Good afternoon, Mr. Chairman, Members of the Committee and staff. My name is Curtis Osceola. I am the Executive Director of United South and Eastern Tribes, Inc. and also a member of the Micosukee Tribe of Indians in Florida.

USET is an inter-tribal organization composed of sixteen federally recognized American Indian Tribes located in the eastern United States. USET, headquartered in Nashville, Tennessee, was founded in 1968 and is dedicated to promoting the economic and social welfare of its member tribes.

March 12, 1986 the member tribes by unanimous consent have gone on record to support the efforts of the Wampanoag Tribal Council of Gay Head by resolution. The efforts being the passage of legislation to implement the settlement of the federal litigation entitled Gay Head Tribe of Indians v. Town of Gay Head.

USET's understanding of the Bill before this committee is to ratify a negotiated settlement reached by all parties involved, including the Gay Head Tribe, the town of Gay Head, the Gay Head Taxpayer's Association and the State of Massachusetts. The USET member tribes have always taken the position that an Indian Nation has a sovereign right to make its own decisions on important legal issues which affect the welfare of its people provided that such tribe has access to the highest quality legal council, technical assistance and Federal support to assure that such a position is in no way coherced. Our communications from the Gay Head Tribe have informed us that their tribal members have overwhelmingly adopted the proposed settlement by a vote of 164 to 29 and that this endorsement reflects the wishes of all the appropriate Gay Head members who choose to vote on this important issue.

The issues and facts in the case are essentially the same as that raised in Penobscot/ Passamaquoddy Tribes of Maine, the Narragansett Tribe of Rhode Island and the Mashantucket Pequot Tribe of Connecticut, that a state's purported termination of an Indian Tribe's title to lands within the state without the prior approval of the Federal government are in violation of the Indian Non-Intercourse Act of 1790 (25 U.S.C., 177).

The proposed legislation provides for the extinguishment of any and all claims that the Wampanoag Tribe of Gay Head may have to land within the town of Gay Head and/ or within the State of Massachusetts, generally the terms of the bill will allow the Gay Head Tribal Corporation to hold title to and administer approximately 602 acres of settlement lands.

Also, the bill has taken into consideration past opposition on certain provisions of the settlement legislation that:

1. Requires federal government to fund the major portion of the settlement, the state will carry its share of the financial burden
2. Recognition of the tribe is not an issue in this bill as it was in the Mashantucket Pequot Settlement, the tribe is petitioning the BIA's federal acknowledge branch separately on this matter.

USET would therefore request that the committee considers this proposed legislation favorably and resolve the issues on behlaf of the Gay Head Tribal Council. On behalf of the USET organization I would like to thank you for this opportunity to testify here today.

TESTIMONY OF JAMES L. QUARLES III
ATTORNEY FOR THE GAY HEAD TAXPAYERS ASSOCIATION
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

Mr. Chairman, members of the Committee, I am James L. Quarles of the law firm of Hale and Dorr, counsel to the Gay Head Taxpayers Association. Since 1976 my firm has defended thousands of landowners in Massachusetts, Maine, New York, and South Carolina who have unexpectedly learned that their right to possess the land and homes in which they have invested their lives and fortunes have been called into question by the pendency of an Indian land claim. I am honored to appear before you today to testify in support of S. 1452, a Bill which would settle the Indian land claims in the Town of Gay Head, Massachusetts.

Gay Head is a small town at the western-most end of the island of Martha's Vineyard. For more than 200 years Gay Head has been a community in which people of various backgrounds and heritages have lived together harmoniously. However, in 1974 a lawsuit was filed in the United States District Court for the District of Massachusetts entitled Wampanoag Tribal Council of Gay Head, et al. v. Town of Gay Head, et al., C.A. No. 74-5826-McN (D. Mass.). Although, by its terms, that lawsuit seeks only the recovery of a portion of the land in Gay Head, its pendency has clouded the title of all of the landowners in Gay Head.

Our client, the Gay Head Taxpayers Association, was formed in 1973 to protect the rights of landowners in Gay Head. In 1976 the Taxpayers Association voluntarily joined the litigation as a defendant. Faced with the prospect of lengthy, inordinately expensive and divisive litigation, the Taxpayers Association twice commenced negotiations with the plaintiff, Wampanoag Tribal Council of Gay Head, Inc. The first effort at mediation was undertaken by Dean Sacks of the Harvard Law School. In 1981 another effort was commenced to settle the litigation which threatened to divide the community. After two years a settlement agreement was reached. That settlement included an undertaking by the Taxpayers Association to join with the plaintiff to seek the passage of legislation which would bring a final solution to this dispute. S. 1452 is that final solution, and we urge this Committee to report favorably on it.

It is not our purpose to argue here the merits of the litigation which this Bill would settle. If this Bill is not enacted and the parties must return to the courtroom for its resolution, there will be many disputes among the residents of Gay Head. There is, however, no dispute that the resolution of this problem by litigation will be an expensive ordeal for all parties, and one which should not be visited upon the innocent residents of Gay Head.

The rights of the innocent landowner must be considered in evaluating this legislation. Their right to ownership and possession of the land they hold is jeopardized. Consider for a moment who the people are whose rights are threatened by the assertion of this ancient claim. The vast majority of them are homeowners who have acquired land and homes in Gay Head within the last twenty or thirty years, completely unaware of any ancient legislation or conveyance which forms the basis of the plaintiffs' claims. Here the Wampanoag Tribal Council of Gay Head, Inc. claims that an action taken by the Commonwealth of Massachusetts in 1870 permits them to challenge the validity of titles which are now more than 110 years old. The claim is, apparently, that state officials failed to follow correct procedures when Gay Head became a town and failed to involve the federal government in that process. But my clients, innocent, good-faith purchasers of land, had nothing to do with the transactions in question, and should not be at risk because of some claimed error by public officials who acted more than a century ago. These private citizens now face the possibility of a claim that actions occurring in 1870 may threaten their homes and property. Surely this Committee, this Congress, and the entire Nation must sympathize with these guiltless people who face the terrible burden of defending their homes and property.

Faced with the horrible risk of losing their land, citizens such as the members of the Gay Head Taxpayers Association are compelled to defend themselves at great effort and expense. The first Indian claim in which our firm was involved was the _Mashpee_ trial in the Massachusetts federal court. Mashpee is but 30 miles from Gay Head. After months of hotly contested pretrial motions and depositions, the court ordered a jury trial on the single issue of whether the _Mashpee_ plaintiffs constituted an Indian tribe. The trial on that single issue took more than forty days, after which the judge and jury found that the plaintiffs were not an Indian tribe at certain key dates, and therefore, had no claim under the federal statute which is the cornerstone of all these lawsuits. The judgment for the defendants was appealed and affirmed.

Tribal existence is only one of several elements of a plaintiff's prima facie case in Indian land claim litigation, and if the entire Mashpee case had to be tried, the trial would have taken months. In addition to the legal fees that are incurred in pursuing or defending against an Indian land claim, the trials require lengthy testimony for both sides by historians and other expert witnesses who also receive payment for their time. A trial on the merits of all issues would likely take years of preparation and research and would exact an enormous toll on the pocketbooks of the landowners and all the parties. Although the plaintiffs often receive indirect financial assistance from the federal government in prosecuting these lawsuits, there is no federal statute which entitles a prevailing party to an award of attorneys' fees in Indian land claims, and the burden falls on the taxpayers of these isolated communities to defend what they have always believed to be theirs.

Legal fees in Mashpee totaled approximately $250,000 in 1977, and trial on all of the issues could have cost several times that. The expense of defending against Indian land claims, however, is almost insignificant when compared with the enormous uncertainties and disruptions engendered by the mere pendency of the lawsuits. From the day that a group claiming to be Indians first announces its intent to claim ownership of and possession to land in dispute, the title to the land is clouded, and the value and marketability of the land is seriously impaired. And the resolution of these claims is neither simple nor quick. For example, our firm is presently engaged in the defense of the State of South Carolina, several communities, and landowners in a land claim brought in the United States District Court for the District of South Carolina. That claim, which involves 225 square miles aptly demonstrates the complexity of the litigation of Indian land claims. That case was filed in 1980. We moved to dismiss on the grounds that a 1959 statute precluded the claim. The district court agreed and dismissed the claim. The plaintiffs appealed to the United States Court of Appeals for the Fourth Circuit, and a panel of three judges split two-to-one and reversed the dismissal. We sought a rehearing before all of the active judges on the Fourth Circuit. Those seven judges split four-to-three and affirmed the original panel's conclusion that dismissal was inappropriate.

We sought and received certiorari from the United States Supreme Court. That case was argued on December 12, 1985 and a decision has not yet been rendered. Seventeen federal judges will have considered the threshold question of whether this litigation may proceed, and the case has been litigated for almost six years but no answer has yet been filed, and the merits of the plaintiffs' challenge to the transaction have not yet even been considered.

Enactment of S. 1452 will remove from all of the residents of Gay Head the burden of facing a comparable piece of litigation. We believe that the enactment of this legislation is the appropriate response for four reasons.

First is the recent decision by Governor Dukakis to support a contribution by the Commonwealth of Massachusetts to the funding of this legislation. That action, as well as the Commonwealth's enactment of a Bill authorizing the transfer of the Town lands to the plaintiff, demonstrates the Commonwealth's recognition that the burdens of this litigation should not be shouldered by the innocent landowners who, by happenstance, purchased homes in Gay Head instead of the adjoining community of Chilmark or other communities on Martha's Vineyard.

Second, S. 1452 strikes an appropriate accommodation between the desires of the plaintiffs and the other citizens of Gay Head. Section 10 of S. 1452 provides that the lands acquired under this Bill and any lands later acquired shall be subject to the criminal and civil laws, ordinances and jurisdiction of the Commonwealth of Massachusetts. For the last 110 years the Town of Gay Head has operated in the same manner as other towns in Massachusetts. This Bill ensures that that jurisdictional relationship will remain unchanged and that the residents of Gay Head will not suddenly learn that some of the generally applicable laws of the Commonwealth do not apply any longer.

Third, the Bill will remove the cloud which has hung over the land titles in Gay Head. Although the parties' agreement to attempt to settle the litigation by the enactment of this legislation has mitigated the problem, the failure to enact legislation may have a crushing impact on the ability of innocent landowners to transfer their property. In the course of the litigation of the Mashpee case, one of my partners was approached by an elderly woman as he returned to his car in Mashpee. She recounted that her husband had died, she had medical problems, and her doctor had instructed her to move to Florida for health reasons. However, because of the pending Indian land claim, she could not get her house, her only asset, out of probate so that it could be sold and she could retire to Florida. S. 1452 would ensure that that injustice does not reoccur in Gay Head.

Finally, and perhaps most importantly, enactment of S. 1452 would remove the cloud which threatens the relationships between the residents of Gay Head. For years people have elected to live in Gay Head because of their desire to live in a remote community which welcomed people from diverse backgrounds and promised an opportunity to return to the simpler way of life in which your neighbors were your friends and a true sense of community prevailed. However, since the filing of the litigation non-Indian residents have faced the uncertainty engendered by the threat that their title to and possession of their homes may be in jeopardy.

Congress alone can protect the innocent citizens of Gay Head not only from the risks they face in the litigation, but also from the cost and uncertainty occasioned by the very existence of claims threatening those citizens' homes. Whatever may be the sincerity of the Indian plaintiffs' belief that they were aggrieved in the past, we cannot forget the grievous losses which threaten the non-Indian citizens of Gay Head in the present. The courts cannot erase yesterdays' mistakes, but Congress can erase todays' misfortunes. This Bill is an appropriate resolution to a difficult problem and we urge this Committee to report favorably on it.

I would be pleased to answer any questions any of you may have.

TESTIMONY OF HANNAH L. MALKIN
PRESIDENT OF THE GAY HEAD TAXPAYERS ASSOCIATION
BEFORE THE SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

Mr. Chairman, members of the Committee, I am Hannah L. Malkin, a landowner in the Town of Gay Head, Massachusetts and the President of the Gay Head Taxpayers Association. It is an honor to appear before you today to testify on S. 1452, a Bill which means so much to the people of Gay Head.

Gay Head is a small community located on the Island of Martha's Vineyard. It has long been famous for the magnificent clay cliffs which overlook the Elizabeth Islands. The lighthouse located on those Gay Head cliffs has, since 1799, guided mariners and more recently attracted tourists to Gay Head and to Martha's Vineyard.

My husband and I came to Gay Head in 1969 to purchase a home. We selected Gay Head for many of the same reasons which have attracted people to Gay Head for hundreds of years. Although Gay Head is only 90 miles from Boston, 7 miles off of Cape Cod, and 15 miles from the more settled Martha's Vineyard towns of Edgartown and Vineyard Haven, Gay Head remains a remote location of extraordinary beauty. It combines areas of woods, moors and dunes with breathtaking views of Vineyard Sound, the Atlantic Ocean, and Menemsha Pond.

However, perhaps even more attractive than its physical beauty was the fact that Gay Head offered the opportunity to enjoy the simpler way of life which had vanished from much of America. Gay Head has always been a small town. Even today there are fewer than 250 homes in Gay Head. For centuries Gay Head has offered the sense of community which results from living in a small community where families know and trust each other.

To obtain the benefits of this sense of community, individuals now members of the Taxpayers Association purchased land in Gay Head at considerable sacrifice and expense. In many cases, the sellers were the individuals whose claim now poses a threat to that land.

In the early 1970's Gay Head underwent a change. At a time when other eastern Indian groups were beginning to assert claims to land, 14 people formed the Wampanoag Tribal Council of Gay Head, Inc. The Tribal Council promptly began to work toward the transfer of the common lands owned by the Town of Gay Head to the Tribal Council. In March 1973, the Tribal Council proposed at a town meeting that the Town transfer those common lands to it, but the matter was never brought to a vote. In the Fall of 1974 Thomas Tureen, Esq., who was then handling an Indian land claim in Maine, filed in the Massachusetts federal court a suit on behalf of the Tribal Council against the Town of Gay Head. According to Mr. Tureen's lawsuit, the ownership of those common lands never passed out of the hands of the proprietors of Gay Head when Gay Head became a town and the Tribal Council was the rightful representative of the heirs of those proprietors. That lawsuit, if successful, would threaten the titles of all Gay Head landowners.

The filing of that lawsuit worked a substantial change at Gay Head. The suggestion that any portion of the town lands did not belong to all of the people of the town was a sharp break from Gay Head's tradition as a close-knit community. Non-Indian taxpayers and residents became concerned that they would lose title to their property, that access to the shoreline and other natural resources would be lost and that the jurisdiction of state and local governments would be compromised.

Our organization, the Gay Head Taxpayers Association, was formed in 1973. I am currently its president. Our membership includes more than 75 percent of the people of Gay Head who are not affiliated with the Wampanoag Tribal Council of Gay Head, Inc. or others who assert an ancient claim to the ownership of Gay Head. Approximately 140 families are members of our organization. In 1976 our organization voluntarily joined the litigation commenced by the Tribal Council as a defendant. From the very beginning, our goals have been to protect our homes and land, and to return Gay Head to the harmonious atmosphere which attracted us to it. All of us also believe that there is an inherent and obvious inequity in compelling innocent landowners to defend their titles against a claim based on acts occurring more than 100 years ago.

In 1977, at our urging, Albert Sacks, then dean of the Harvard Law School, became a mediator and attempted to resolve the disputes between the residents of Gay Head who were aligned with the Tribal Council and those who were aligned with our organization. That effort at mediation continued for two years, but was ultimately unsuccessful.

Later, in 1981, we began another effort to attempt to settle the dispute which was tearing our town apart. For more than two years Lawrence Mirel and Thomas Tureen negotiated in an attempt to achieve a mutually acceptable solution to the competing interests of the Tribal Council on one hand and our association and its members on the other.

In late 1983 we were successful in reaching the understanding contained in the Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claims. The Bill which is before the Committee today, S. 1452, is the result of that agreement, and, on behalf of the members of my association, I urge this Committee to report favorably on that Bill.

Our membership urges the passage of this Bill for three basic reasons.

First, as our counsel will testify, the litigation of an Indian land claim is an extremely complex and extraordinarily expensive undertaking. Our membership of only 140 families has raised and spent almost $175,000.00 in an effort to defend our properties and to seek the passage of the legislation necessary to resolve this dispute. We have been forced to raise and spend these funds despite the fact that no one suggests that any member of our organization is in any way responsible for any of the wrongs the Tribal Council claims were worked upon it. We are, of course, committed to continue to defend our homes and property, but believe that the continuation of the litigation is a burden we should not be forced to bear.

Second, in addition to the money we have spent, the pendency of this lawsuit has been a severe hardship to us. Although the prospect that the litigation might be settled by the enactment of a Bill such as S. 1452 has spared us the extraordinary hardships visited on the residents of Mashpee and other areas where Indian land claims are pending, title insurance companies are reluctant to insure the titles of Gay Head properties. In addition, banks have been reluctant to provide mortgages, thus making land transactions difficult if not impossible.

Third, this legislation is a fair resolution of the dispute. It produces a result which is desired by the plaintiffs. From our standpoint, not only does the Bill remove the cloud upon our titles, but it respects the expectations we had when our members came to Gay Head. Our members bought their lands and homes on the understanding that they were moving into a community where the rules and regulations were the same as in the other towns in Massachusetts. It was for that reason that we conditioned our acceptance of the settlement upon a requirement that all of the laws, ordinances and regulations of the Commonwealth of Massachusetts apply to all of the lands in our town. That is what is contained in Section 10 of this Legislation. That section insures that none of the lands in our town will be exempt from generally applicable state regulations against gambling or other presently prohibited activities which would ruin our town.

While this bill does not provide any party with all they might want, it does provide all parties with that which they need most. For the Tribal Council, the Bill provides an inalienable land base and a new opportunity to pursue their Indian ancestry. For the Town, the Bill preserves the invaluable common lands from development, continues its ownership of the beaches, preserves its tax base and confirms its jurisdictional authority. For the State, the Bill likewise confirms that Gay Head and its residents are subject to the same laws and regulations as any other citizen of the Commonwealth of Massachusetts. For the property owners, the Bill removes the cloud on their titles, removes a heavy financial burden and provides an opportunity to eliminate the divisiveness which so threatens our community.

Mr. Chairman and members of the Committee, on behalf of the Gay Head Taxpayers Association I ask that you report favorably on this Bill. Only the enactment of a Bill such as this can end the expense, uncertainty and division which has been visited upon our town. The Commonwealth of Massachusetts has done at least its share to make this settlement of this litigation possible both by authorizing the transfer of town lands and its expression of a willingness to contribute one-half of the cost of this settlement. Now only Congress can effectuate the settlement which both we and the Tribal Council have reached and desire.

Thank you for permitting me this opportunity to convey the sentiments of our members.

TOWN OF GAY HEAD
GAY HEAD, MASSACHUSETTS 02535

PREPARED STATEMENT OF JEFFREY L. MADISON

My name is Jeffrey Madison, I am a member of the Gay Head tribe and a lifelong resident of Gay Head. I come here today as a Selectman who represents all of the residents of Gay Head, Indian and non-Indian, year round and seasonal, and I support overwhelmingly the terms and conditions as outlined in Senate Bill #1452.

I would like to point out to the Committee that Gay Head Indians have always held the Selectmen's position and all other elected town offices since the incorporation of our town in 1870. It is my opinion that the government of the Town of Gay Head has been the traditionally recognized government of our Indian people since our status was changed from an Indian district to a township.

We as Indian people maintain control of the Town government today because we continue to outnumber non-Indian residents during the off-season (October to May), when the annual town meeting and elections are held. This, however, is sure to change unless you, as our Representatives, act favorably on this legislation.

Because of skyrocketing real estate values and a lack of an established local economy, my people are being forced to move from the land we so dearly revere.These problems can be resolved by the approval of the legislation under consideration here today.

Throughout the ten years of debate between the parties concerned with this problem, the Town of Gay Head suffered greatly. The animosity generated on all sides of this dispute was not the least of our problems. At the height of this animosity we had trouble getting approval, at summer town meetings, when seasonal residents can muster their forces, for such trivial items as fixing a Town Hall door, or such necessary items as replacing a thirty-five year old piece of fire apparatus.

During the summer of 1983, the Selectmen, after maintaining a neutral position in the settlement process, called all sides together in an open forum. This action was prompted by a particularly vicious advertisement in the local newspaper, paid for by the Gay Head Taxpayers Association, which made an Island wide appeal for funds to carry on their fight in opposition to the Indian land claim. To our surprise, almost everyone on both sides of this issue who attended the hearing awakened to the fact that unless each side compromised somewhat there would be no alternative to a costly and divisive trial. A prospect no one wanted to consider.

Following the August, 1983 hearing, the Wampanoag Tribal Council of Gay Head, the Gay Head Taxpayers Association, and the Town of Gay Head all made concerted efforts to come to a compromise agreement which all sides could comfortably present to their members for their approval.

I cannot express to you the change in attitude in our tiny community after all sides finally ratified the agreement. It was as if a monstrous weight was finally cast aside.

This agreement does not give both sides everything they desire. What it represents is ten years of struggle, give and take, of understanding and learning the concerns of our neighbors, and developing a respect for those concerns.

It is an agreement which both Indian and non-Indian people who love Gay Head can accept.

It is an agreement that will provide land for our Indian children and their children to build homes and maintain the unique indentity of Gay Head. Thus preserving the timeless heritage of our forefathers.

This is an agreement that provides access to beaches for the summer visitors who have invested so much in the beauty each one of us enjoys in Gay Head.

This is an agreement which has been presented fairly to each and every person we are aware of who may have an interest in the outcome of this case.

This is an agreement which has been accepted overwhelmingly by every organization with a stake in its outcome. In case of the Town of Gay Head, at a legal town meeting held in November, 1983, the agreement was approved by a vote of ninety-two to thirteen.

Finally, we face the threat of this agreement expiring and once again reliving the past no one wants. We respectfully request that you act on this proposal now.

Our tribe has traditionally lived in peace and welcomed our non-Indian neighbors. We want you to give us the opportunity to continue this tradition of peaceful co-existence.

I urge you, on behalf of the people of Gay Head, to recommend that the United States Senate act favorably on Senate Bill #1452.
Thank you.

STATE TAX FORM 128 — OVER VALUATION — G. L. CH. 59 SEC. 59

THE COMMONWEALTH OF MASSACHUSETTS

Fiscal Year 19 85

GAY HEAD
NAME OF CITY, TOWN OR DISTRICT

Do not write in this space
Date application received:

APPLICATION FOR ABATEMENT OF REAL ESTATE TAX

Must be filed with the Board of Assessors on or before October 1. File separate application for each parcel of real estate.

Name(s) of record owner Lawrence N and Anne H. Button Tax Bill No.

Name of applicant (if other than record owner)

The above-named person aggrieved by the Real Estate Tax on property described below hereby applies for an abatement on assessed valuation of $ 145,200.00.

Location and Description of Property Number and Street, Lot, and Area of Land. Description must be sufficiently accurate to identify the premises.

Map 4, Parcels 62 & 64 & Lot 107, Lobsterville Road
22.10 acres

Property acquired 1959 (YEAR) How Private Sale (PRIVATE SALE, AUCTION, INHERITANCE, FORECLOSURE, ETC.) From Jensen Lagoon Development (NAME) $ (FULL CONSIDERATION)

Building constructed None (DATE) Type None (WOOD, BRICK, STEEL, STUCCO, ETC.) $ (COST)

Alterations or improvements None (DATE) (CHARACTER) $ (COST)

Square feet of area covered by building None Number of stories None

If the applicant is not the person assessed, what is the applicant's interest in the property?

Not Applicable (SPECIFY INTEREST) When was such interest acquired?

Is property mortgaged? NO (YES OR NO) If the answer is "yes," complete following schedule.

	Date of Mortgage	Recorded or Registered Book, Page No.	NAME AND ADDRESS OF HOLDER OF THE MORTGAGE FULL NAME OF INDIVIDUAL, BANK, CORPORATION, ETC.	Amount of Mortgage
1st				$
2nd				

Has any mortgage been foreclosed? (YES OR NO) If yes, give particulars:

Amount of foreclosure, if any $

Is property leased or rented? Partly or entirely? Term of lease Date of expiration Gross Amount $ Net Amount $

Name of lessee (IF MORE THAN ONE, ATTACH LIST) How used by lessee

If not fully rented, state vacancies during year

Amount of Gross Annual Rental when Fully Rented $

Gross Income $ (FOR 12 MONTHS PRECEDING JAN. 1, 19) Expenses $ (MUST BE ITEMIZED BELOW) Net Income $

Itemized List of Total Expenses For 12 months preceding January 1, 19 (A supplementary schedule may be required)

Insurance	$	Utilities	
Repairs		Wages	
Heat		Miscellaneous (explain in detail)	
Taxes			
		Total	$

THE FILING OF THIS APPLICATION DOES NOT STAY THE COLLECTION OF YOUR TAX. IT SHOULD BE PAID AS ASSESSED. REFUND WILL FOLLOW IF ABATEMENT IS ALLOWED.

THIS FORM APPROVED BY COMMISSIONER OF CORPORATIONS AND TAXATION

Complete statement of reasons for this application: (Include contentions of law)

SEE ATTACHED SCHEDULE A.

Tax Assessed $ 958.32 Amount Paid $ 958.32 Paid when presented.

Tax Paid by ______ on ______ 19

Subscribed this day: ______ of ______ 19____ under the penalties of perjury.

Signature of Applicant X Lawrence N. Button X Anne H. Button

FOR ASSESSORS' RECORDS

Notice sent ______ (DATE) for hearing ______ (DATE) Hearing held ______ (DATE) with ______ (NAME)

Map Number ______ Lot Number ______ Account Number ______ Page ______ Line ______

ABATEMENT VOTED $ ______ ON VALUATION OF $ ______

Adjusted tax for the fiscal year ending June 30, 19____ $ ______

Revised Valuation $ ______ Change Card: Yes ☐ No ☐

Abatement certificate number ______

______
______
______ Board of Assessors

Date ______, 19____ of ______

Overvaluation
G. L. Ch. 59 Sec. 59

Abatement Certificate No. ______

FISCAL YEAR
1985

APPLICANT

ADDRESS

LOCATION OF PROPERTY

NAME OF CITY OR TOWN

Ward ______ Line ______

Precinct ______ Page ______

Account Number ______

THE COMMONWEALTH OF MASSACHUSETTS

APPLICATION FOR ABATEMENT
OF REAL ESTATE TAX

FORM 576 HOBBS & WARREN, INC., PUBLISHERS

Schedule "A"

The facts surrounding our request for tax abatement are as follows:

In the early 1970s when we listed this property for sale, we could not sell due to the initiation of the local dispute which resulted in the refusal by financial institutions to consider the financing of properties in the Town of Gay Head. This dispute went on and on for years to our detriment.

In 1985 when we were to close a sale to a bonafide buyer who was ready, willing and able to purchase the property, we were refused a permit for a standard minimum septic system for one house on these 22.10 acres of property. The petition was presented by a qualified engineer in whose expert opinion there would be no damage to the land. The presentation was based on a reasonable request for a variance made necessary due to the continual changing of set back requirements - to where they are double those required by the State - over the twelve year period of the ongoing dispute referred to.

In 1980, properties in Gay Head were revalued by an off-Island firm at which time this property was reassessed and revalued at $103,200 (fiscal year July 1, 1980). At that time a form letter was received from the Town of Gay Head so notifying us, in reply to which and as directed by said letter, we protested via letter dated August 21, 1980 addressed to the Board of Assessors to which we received no reply or consideration. Subsequently, in fiscal year 1983, this evaluation was increased to $145,200.00.

In all of these years, we have contributed to the town. The town has never contributed to us. We help pay for the services utilized by the people who are allowed to live in the town and to build on their property. Our property, presently assessed for $145,200 - continues to be taxed even though we and our assigns are put in the position of being able to utilize any of the services for which we pay. This discrimination has resulted in an unfair and inequitable situation.

The Town's tax assessments throughout the years have held this land to have a value and its high tax assessments hold this land to have a high value which implies to the taxpayer that it can be sold and used. Then, after all of this taxation, when we found a buyer who wanted to build one house on this large tract, the town has rendered valueless our property on which it has collected taxes for twenty-five years.

In view of all of the foregoing which has effectively made our property worth nothing, we seek immediate relief and request abatement of taxes to zero until such time as the Town will re-evaluate this situation and allow us to use our land upon which to build a residence. We further request a return of all taxes paid, plus interest.

APRIL 15, 1870

BOARD OF SELECTMEN
GAY HEAD, MA 02535

PREPARED STATEMENT OF MARC E. WIDDISS

The Town of Gay Head has, for more than a decade, endured a confrontation that few communities have experienced, or would desire to experience.

The conflict was born from an historic obligation that has become obscured by time and memory. Our town has been divided for too long a period. Some residents fear for their homes. some fear for their heritage. Both concerns are valid, and both interests can be satisfied by the proposed settlement.

These fears cannot be releived by a court decision. In court, animosities can only be elevated; the divisions made deeper.

The community of Gay Head faces crucial problems of housing, education, health and employment. Dealing with these problems will be made easier without the confines of a community in stress.

These are among numerous reasons for travelling again to our Nation's Capitol searching for a resolution. I ask that you consider a favorable adoption of Senate Bill #1452.

In the overall scheme of things, the monetary outlay to resolve this issue will not be a great burden to this administration.

Marc E. Widdiss

APRIL 15, 1870

TOWN OF GAY HEAD
GAY HEAD, MASSACHUSETTS 02535

Mr. Chairman and members of the Committee, thank you for giving me this time to voice my testimony. I am David Vanderhoop, Selectmen Representative in the Town of Gay Head. I am a member of the Wampanoag Tribe of Gay Head and am a life long resident of Gay Head. I would like to take this time to summarize for you the reasons why I support and wish you to take favorable action on Senate Bill #1452, the Wampanoag Settlement.

The Gay Head Wampanoag tribe has endured through the centuries to the present and have been the vital element in the continuing community. When vacation cottages and second homes have been left for primary residences out of town, it has been the Indian resident who remains keeping the institution alive, the town functioning.

We realize that we cannot change the hands of time and with this negotiated settlement we are not trying to do so. All we are asking is the chance for us, including our children, as a

Wampanoag Tribe to be granted the right to remain in Gay Head where our people's heritage lies and will forever.

That is why I, David Vanderhoop, Wampanoag, and Selectmen representing the Town of Gay Head have come today to voice my support of Senate Bill #1452, to insure the tenure of the fragile culture of the Wampanoag people.

Thank you for giving me this opportunity to voice my support for this important legislation.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

In re: ISLAND PROPERTIES, INC. STROCK ENTERPRISES, Bankrupt	Bankruptcy No. 76-2527-L 76-2528-L

ORDER AUTHORIZING SALE OF MISCELLANEOUS GAY HEAD LOTS

This matter having come before me on application of the Trustees, a hearing having been held March 20, 1981, being satisfied that notice given in accordance with the Certificate of Service is adequate, and it appearing that the allowance of the application is in the best interests of the estate, it is hereby

ORDERED that:

1. The Trustee of Island Properties, Inc., Bernard P. Rome, and the Trustee of Strock Enterprises, Jon D. Schneider, be and each of them hereby is authorized to:

   a. execute and deliver the Purchase and Sale Agreement attached to said application, modified by eliminating Lot 578 and extending the closing date to April 30, 1981;

   b. sell Lots 72, 73, 80, 231, 324, 325, 335, 528 and 651, located in Gay Head, Massachusetts, to Anchor Pacific Partnership for $100,000.00;

c. in connection with such sale, transfer all of the estate's interest in Lots 68, 71, 78, 79, 85, 86, 87, 222, 322, 334, 351, 519, 522, 589, 660, 700, 703, 705 and any easement the Trustees may hold across Lots 324, 325 and 87.

d. execute and deliver to the purchaser a deed or deeds and such other documents as either of them deem necessary or appropriate to carry out the terms of said Purchase and Sale Agreement including, without limitation, causing Greenlands, Inc. to join in such documents and actions;

e. pay a commission of $15,000.00 to Land/Vest, Inc. in accordance with the Exclusive Listing Agreement dated April 7, 1978 in the event such sale is consummated;

f. pay real estate taxes from the proceeds of the sale in excess of $8,500.00;

g. pay $500.00 to James Howell for an appraisal of the premises.

2. Said sale is hereby confirmed.

DATED at Boston, Massachusetts this 11 day of March, 1981.

Thomas W. Lawless
Bankruptcy Judge

COMMONWEALTH OF MASSACHUSETTS

RECEIVED

PROBATE COURT
No. C 2390

Suffolk ss.

Frank B. James
Thelma Weissberg, Plaintiff

v.

Wampanoag Tribal Council of Gay Head Inc, Defendant

TEMPORARY RESTRAINING ORDER-PRELIMINARY INJUNCTION

This cause came on to be heard on plaintiff's motionfor (preliminary injunction) (temporary restraining order) and the court having considered the verified complaint, the affidavits submitted in support of said motion and it appearing to the court after due deliberation that the defendant is committing or threatens to commit the acts set forth below, to the irreparable injury of the plaintiff it is ORDERED that the defendant, his agents, servants, employees and attorneys and all persons in active concert and participation with him be and they hereby are restrained and enjoined until further hearing or until such time as there has been a judicial determination of this action from signing an agreement concern settlement of the Gay Head Mass. Indian Land Claims.

provided that the plaintiff unless otherwise exempted by Rule 65 or order of Court, first give security in the sum of $ ______ for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined, such bond to be approved by the court.

Nov 3, 1983
Date

Mary C Fitzpatrick
Judge of Probate Court

CJ 421 (7/75)

GOODWIN, PROCTER & HOAR
COUNSELLORS AT LAW
28 STATE STREET
BOSTON, MASSACHUSETTS 02109
TELEPHONE (617) 523-5700
TELECOPIER (617) 523-1231
TELEX 94-0640
CABLE GOODPROCT BOSTON

JOSEPH F KNOWLES
JOHN B MECHEM
FREDERICK J ROBBINS
CHARLES E GOODHUE III
DONALD J EVANS
WILLIAM J PECHILIS
SAMUEL HOAR
ROBERT B FRASER
PRESTON H SAUNDERS
MARSHALL SIMONDS
RUSSELL G SIMPSON
HENRY B SHEPARD JR
ARTHUR L STEVENSON
PAUL R RUGO
WILLIAM B KING
SAMUEL L BATCHELDER JR
EDWARD T ODELL JR
ALLAN VAN GESTEL
WILLIAM H GORHAM
JOSEPH W HALEY
A JEFFREY DANDO
MICHAEL STEINBERG
JOSEPH L COTTER
DONALD P QUINN
GEORGE W BUTTERWORTH III
DAVID P RIES

DONALD B GOULD
RICHARD E FLOOR
JEROME H SOMERS
ROBERT D PAUL
JON D SCHNEIDER
ROBERT C POMEROY
STEPHEN W CARR
PAUL F WARE JR
DON M KENNEDY
RICHARD A SODEN
EDWARD L GLAZER
RAYMOND P BOULANGER
THOMAS J GRIFFIN JR
ELIZABETH W CASEY
JOHN R WILLIAMS
EVAN JONES
PAUL F MCDONOUGH JR
WILFRED J BENOIT JR
PAUL W SANDMAN
ROBERT F HOUSER
BRACKETT B DENNISTON III
HOWARD X CUBELL
MICHAEL H GLAZIER
KENNETH A COHEN
SUSAN W COOKE
TIMOTHY D JAROCH

COUNSEL
CHARLES B POST
RICHARD H NICHOLS
CARL F SCHIPPER JR
LEONARD WHEELER

OF COUNSEL
GERALD D MCLELLAN

JOHN J CLEARY
FRANCIS W DUBREUIL
THOMAS E PECKHAM
ANTHONY M FEEHERRY
JAMES E MCGUIRE
CAROL GOODMAN
JAMES J DILLON
JOHN KENNETH FELTER
CAROL BURCHARD O'HARE
F BEIRNE LOVELY JR
LAWRENCE R CAHILL
IRA CARP
DAVID H MURPHREE
DAVID F DIETZ
THOMAS H LEE II
DANIEL W CRANE
ANDREW J LEY
JAMES B FARMER
EDWARD WATSON NOBLE JR
TODD L KLIPP
JAMES H PRESTON
JOAN I MILSTEIN
TOBIN N HARVEY
JEFFREY C BATES
JEFFREY H HERMAN
MARJORIE SOMMER COOKE

LYNNE E LARKIN
SUSAN H HALL
LUCY WEST BEHRENS
LEE H SANDWEN
WILLIAM A KUNCIK
HENRY C DINGER
KENNETH W SIMONS
ROWENA H CONRAD
DIANE CUMMER STAN
THOMAS P STORER
JONATHAN P FELTNER
LEONARD G LEARNER
LAURA L CARROLL
STUART M CABLE
PAUL E MENDER
SALLY C REID
LORETTA M SMITH
MARTHA COAKLEY
JAMES H NAGLE
RAYMOND C ZEMLIN
ANDREW B HOAGLAND
TRUDY F REILLY
THOMAS W CHRISTINA
DAVID S BALABAN

BY HAND March 23, 1981

The Honorable Thomas W. Lawless
U. S. Bankruptcy Court
John W. McCormack Post Office
& Court House
Boston, Massachusetts 02109 ✓

Re: Strock Enterprises/Island Properties/
Gay Head Lots

Dear Judge Lawless:

Enclosed is a written appraisal report with respect to the group of Gay Head lots which you considered at a hearing on March 20, 1981. The appraised value of the properties is $100-120,000, as contrasted with a proposed selling price of $100,000. Since the appraisal is in accordance with the oral representations which I made at the hearing, I believe it is appropriate to enter an Order approving the sale. A Proposed Order is enclosed. Would you kindly return a signed copy of the Order?

Sincerely,

Jon D. Schneider

JDS/bbr

Enclosures

cc: Bernard P. Rome, Esquire
Barry B. White, Esquire

APPRAISAL REPORT

PROPERTY OF STROCK ENTERPRISES

GAY HEAD, MASSACHUSETTS

March 19, 1981

1. A personal inspection of this property has been made on most of the sites and by checking pertinent information from the Registry Division of the Probate Court for the County of Dukes County, Edgartown, Massachusetts.

The parcels of land as shown on the original set-aside plan of Lands in Gay Head, Pease & Pease Trustees, are as follows:

Lot No.	Title
72	Full
73	"
80	"
231	"
324	"
325	"
335	"
528	"
651	"
68	Defective
71	Slightly defective
78	" "
79	1/3 undivided interest
86	Defective
87	156/720 interest
222	½ undivided interest
334	½ " "
703	3/8 " "
705	½ " "
85	Very small fractional interests
322	" " " "
351	" " " "
519	" " " "
522	" " " "
589	" " " "
660	" " " "
700	" " " "

2. PHYSICAL DESCRIPTION.

Parcel 1. Lots 72 and 73 are contiguous and form a tract of land 15 acres in size lying 1,500 feet north-east of Moshup Trail, a Town highway in Gay Head. This parcel is made up of wooded, rolling hillside sloping in a south-westerly direction toward the Atlantic Ocean. There are many good water views from this parcel. Access to this land is by Old South Road, an ancient Town way which is being paved by the Town of Gay Head in small sections. At this time, the paving ends about 800 feet before Lot 72 is reached, but unpaved access to the property exists. The Town has no specific timetable for redeveloping Old South Road. For most of its length it is only a foot path.

Parcel 2. Lot 80, 2.85 acres in size, lies about 1,000 feet east of Parcel 1, and is low wooded land bordering on an upland marsh. No water view is apparent from ground level. Access to the lot would have to be constructed over Lot 79, as no road to this property exists at this time.

Parcel 3. Lot 231, about 2.3 acres in size, is low wetland, having no water view potential and no current means of legal access to the property. There appears to be a building site on the south-west part of the lot if access can be provided.

Parcel 4. Lots 324 and 325 comprise approximately 11½ acres of heavily wooded land lying about 2,000 feet east of Lot 80. There is at present no means of access to this parcel, although the extension of Old South Road could provide access some time in the future. Water views from this land are not apparent, and there are considerable areas of standing ground water on this parcel at this time of the year.

Parcel 5. Lot 335 is a 2 3/4 acre parcel of land covered by large trees. It does not have water view potential nor does it currently have any legal means of access. This parcel is located about 1,000 feet north of Lot 325, and there are substantial amounts of wetland on both sides of the lot.

Parcel 6. The part of Lot 528 lying immediately north of Moshup Trail is slightly over one acre in size. It is composed of sand dunes, beach sand areas, and sparse shoreline vegetation. Even though houses were built on either side of this parcel some years ago, it is somewhat doubtful that the Town of Gay Head would approve building permits for this land.

Parcel 7. Lot 651 is a 2.85 acre tract of sand dunes lying immediately north of Lighthouse Road, a Town highway in Gay Head. This lot lies about 500 feet south of Vineyard Sound, the northern boundary of the Town of Gay Head. It is composed of sand dunes contiguous to the sea, and under current conservation regulations would not be likely to get construction permits.

Parcels 1 through 7 represent the total land of Strock Enterprises that is free of title defects and partial interests. Because of lack of access and environmental regulations, only Parcel 1 could be readily marketed, in the opinion of this appraiser.

Parcel 8. Lots 68 and 71 together comprise 3.65 acres of brush-covered land abutting the north side of Ocooch Pond, a small, attractive body of fresh water. Access to this parcel could be provided from Lot 72 which lies immediately to the east. This land rises sharply from the pond and provides excellent Ocean water views as well as views of the pond itself. Title to both lots is defective.

Parcel 9. Lot 78 abuts Parcel 1 to the east. It is 5 acres in size and has very similar topography and vegetation. The title to this lot is slightly defective.

Parcel 10. Lot 79 also abuts Parcel 1 to the east and is comprised of 25.7 acres of wooded hillside that is generally of a higher elevation than the aforementioned parcels and has excellent water views of the Atlantic Ocean to the South. At one time this parcel was the site of a U.S. Government LORAN broadcast station. A metal and concrete building in very rundown condition exists on this parcel. It is about 40 X 60 feet in size and is of no great monetary value. Strock Enterprises has title to a 1/3 undivided interest in this parcel.

Parcel 11. Lot 84 is 10.2 acres in size. It is high dry land heavily covered with trees. A few distant water views are possible. Access to Lot 86 could be provided from Lots 325 and 324 if and when Old South Road is extended. Title to this lot is defective.

Parcel 12. Lot 87 lies south of Lot 86 and is 11½ acres in size. About 25% of this lot lying to the southwest is wetland of dubious value, but the remainder is similar to Lot 86 in most respects. Legal access could be provided from Lot 86 at some future date. No other access could be provided at this time since the Town has not elected to claim the Toad Rock Road as an ancient town highway. Title is to 22% of this parcel.

Parcel 13. Lots 705 and 222 together form a parcel of land about 3 acres in size located immediately north of lot 528. This parcel has upland vegetation and topsoil and could provide excellent water views from a two-story house. Strock Enterprises has a ½ undivided interest in this parcel.

Parcel 14. Lot 334, 1.17 acres in size, is contiguous to Lot 335 (parcel 5) and is similar to Lot 335 in all respects. Title is to a ½ undivided interest.

Parcels 8 through 14 are tracts of land that have defective title or substantial partial interests. These parcels could not be readily marketed on a retail basis, in the opinion of this appraiser. Their primary value would be to other owners of the subject lots.

Parcel 15. Remaining minor interests in the following lots have nominal financial value: Lots 85, 322, 351, 519, 522, 589, 660, 700 and 703.

3. COMPARABLE SALES:

The Gay Head real estate market has been severely depressed by the threat to reclaim land in the Town by the Wampanoag Tribal Council, a local Indian group. As a result, there have been few sales in recent years. The only large tract sale of land in this time period occurred when Alexander Forger purchased 372 acres of land for $1,100,000.00. This price is approximately $3,000.00 per acre. The Forger tract is vastly superior land to the property being appraised, in that it has 7,980 feet of frontage on Squibnocket Pond, 3,020 feet of frontage on the Atlantic Ocean, and many of the best water views on the Island of Martha's Vineyard. In addition, the Forger land forms a nearly contiguous tract with roughly 3,000 feet of frontage on documented highways, and as a result has no problems with access to the land. There were title problems in this land but they were much less severe than the Strock Enterprises property.

4. MARKET CONDITIONS.

As mentioned in the previous section, the Gay Head real estate market is severely depressed by Indian land claims and the potential for expanded claims. Since most local attorneys are not certifying Gay Head titles, bank mortgages are difficult and in some cases impossible to obtain. Leaders of the Wampanoag Tribal Council have targeted the property of Strock Enterprises as land they wish to reclaim and have stated they would expand their current suit against the Town of Gay Head to include the Strock land if any private action threatened the availability of this land to them.

5. VALUATION.

The fair market value as of March 19, 1981, for such title as may exist for the Strock Enterprises properties sold in a single transaction to a cash buyer would fall in a range of $100,000.00 to $120,000.00.

James B. Howell

James B. Howell
Registered Broker
Commonwealth of Massachusetts

APPRAISER'S QUALIFICATIONS

Licensed Real Estate Broker #82891, Commonwealth of Mass.

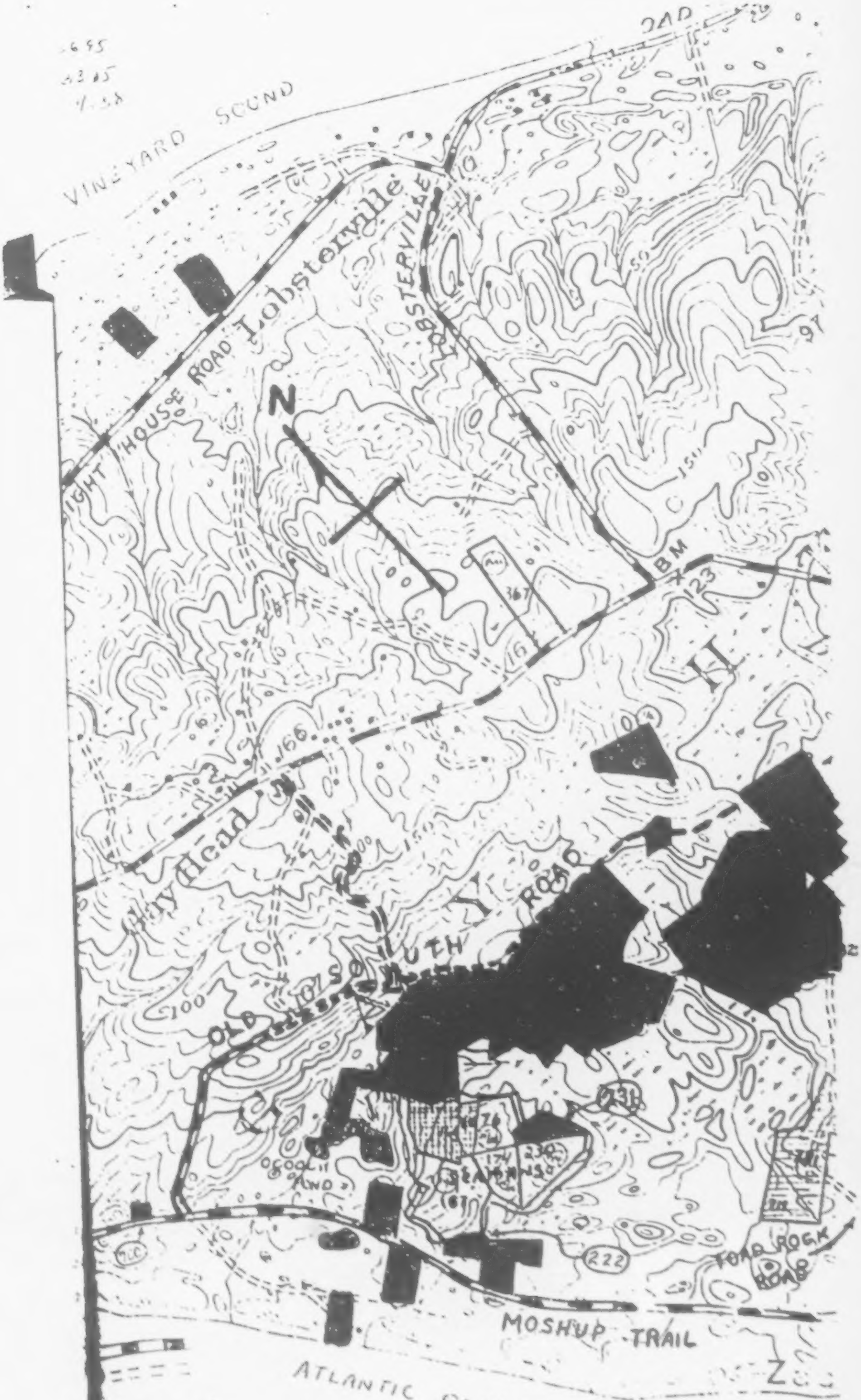
Resident of Martha's Vineyard for 38 years.

Academic Preparation: Graduate of Tisbury High School, Vineyard Haven, Mass. Graduate of Worcester Polytechnic Institute - B.S., 1964.

Experience: Executive engineering positions have included responsibility for buying, selling and appraising corporate real estate for a total of nine years, with E. I. DuPont, the Badger Company, and Ocean Spray Cranberries, Inc.

Presently an associate in Howell Real Estate, Gay Head.

Appointed appraiser by Probate Court, Dukes County, Mass. on numerous cases.


.695
.3305
1.38
VINEYARD SOUND
LIGHT HOUSE ROAD
Lobsterville
LOBSTERVILLE
N
367
BM
23
161
166
H
Gay Head
Y
OLD SOUTH ROAD
100
150
231
230
222
TOAD ROCK ROAD
MOSHUP TRAIL
ATLANTIC OCEAN
ORIGINAL PLAN: 1"=900'

STATEMENTS OF ATTORNEY DOUGLAS A. RANDALL

"The defendants move the Court...[t]o dismiss the action on the ground that the Court lacks jurisdiction over the party plaintiff in that said plaintiff lacks standing to bring this suit because the Wampanoag Tribal Council of Gay Head neither represents nor is the same as the Wampanoag Tribe, and further that the Wampanoag Tribal Council, Inc. is not the legal successor to the Wampanoag Tribe's rights." TOWN OF GAY HEAD'S MOTION TO DISMISS, CA No. 74-5826-Mc, filed January 23, 1975.

"If suit has been brought by the council as a corporate entity, the laws of the state where it was incorporated determine its capacity to sue. ... Defendants assert that nowhere in the pleadings is there any evidence as to how the corporation gained its authority to represent all Wampanoag Indians, nor are there any facts which indicate that plaintiff corporation has any legal rights which have been infringed." DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR MORE DEFINITE STATEMENT AND MOTION TO DISMISS, CA No. 74-5826-Mc, filed April 25, 1975, pp. 13-14.

"The complaint in paragraph 4 refers to the plaintiff as the Wampanoag Tribal Council of Gay Head, Inc., while the caption lists plaintiff as the Wampanoag Tribal Council of Gay Head; the distinction is of major importance. If the former case is correct, there is nothing to indicate how the corporation (whether business or charitable) succeeded to the rights of the Wampanoag Indians or Wampanoag Nation, and if or how said members of that tribe gave to the corporation authority to bring this suit on behalf of all said Indians or Indian nation. The defendants know of no federal rights in said corporation." Id. at 3.

Wampanoag Tribal Council of Gay Head, Inc.'s then attorneys agreed:

"Defendant further argues that if the Council is incorporated, its capacity to sue is to be determined by Massachusetts law. For purposes of the motion to dismiss, this proposition may be conceded." PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS' MOTION FOR A MORE DEFINITE STATEMENT AND MOTION TO DISMISS, CA No. 74-5826-Mc, filed in 1975, p. 7.

HAHN & MATKOV
ATTORNEYS AT LAW

40 COURT STREET, BOSTON, MASS. 02108
ROOM 920 TELEPHONE 523-2213

ROBERT C. HAHN
I. ALBERT MATKOV

OF COUNSEL
D. W. WHITEHEAD
ROBERT R. PARKER

31 August 1981

Frank B. James
Lockwood Lane
Box 39
South Orleans, Mass. 02662

Dear Frank:

When we all met several weeks ago, I agreed to review the Gay Head Indian case pending in federal District Court, and the proposed settlement, then get back to you.

Later however, I advised you that the United States Supreme Court was considering whether or not to review the Mohegan case, that the Court had invited the United States Justice Department to submit their view of the case.

Inasmuch as the principal question presented to the Court was whether or not the Indian Nonintercourse Act applied to "eastern" Indians, it seemed wise to wait and see how the Court handled the Mohegan case before assessing the Gay Head Indians' legal position.

As you know Frank, the Justice Department recommended that the Supreme Court not review the Mohegan case. And the Court followed that recommendation.

Accordingly, the decision of the United States Second Circuit Court of Appeals stands, namely, that the Nonintercourse Act does apply to eastern Indians and their lands.

So we believe that eastern Indians, including the Gay Headers, have gained important legal ground, thereby giving their land claims a substantial boost.

First off Frank, as to the root of the struggle over control of the Gay Head Indian Reservation --

Obviously, any challenge involving land rights upsets those who feel threatened. And the upset here runs deep. For by the standards of 150 years or more ago, non-Indians apparently considered the Gay Head peninsula undesirable, and were willing to let the Indians have it. But by today's standards, Gay Head's open stretches, beautiful beaches and fresh and salt water shore front are most desirable, and of course, have become very valuable.

And while we realize the non-Indians who have gained such a foothold in your Reservation perhaps have more money to fight with, you Gay Head Indians have more law on your side.

It is said ours is a government of laws and not of men. So by that measure, let's try to see where you folks stand legally and what your best moves might be.

As to the proposed settlement --

IN OUR VIEW, THE PROPOSED DEAL SO LOP-SIDEDLY FAVORS THE NON-INDIANS OVER YOU GAY HEAD INDIANS, IT HAS ALL THE EARMARKS OF ANOTHER "MANHATTAN ISLAND BARGAIN".

Why do we feel this way?

We believe the essential weakness of the Gay Head Indian bargaining position lies in the limited nature of their suit in federal court.

In other words, by limiting their Court claim to possession of merely their 230 acres of so-called Common Lands, rather than going all out and claiming their right to possession and damages as to their entire 3400 acre Reservation, the Gay Head Indians gave away ninety-five percent of their bargaining position before they even sat down to negotiate.

Furthermore, a reading of the settlement proposal underscores a concern I expressed to you at our meeting.

Some, as you recall, said it was their understanding the claim just for the Common Lands was merely a test case to establish basic Gay Head Indian rights. And if successful, it would strengthen your claims involving the entire Reservation.

At the time, I suggested that could be dangerous because of a doctrine in the law called Res Judicata, which in your situation simply means, it is much safer to assert all your possible claims at one time in one case. Otherwise you might be barred from making other claims later.

The proposed settlement bears out my concern. In plain words, it says if you accept the settlement, you forever give up all other claims you might have as a Tribe and as Tribal members. And that includes not only trespass and damage claims against the non-Indians who have taken over so much of your Reservation, but your claims against Massachusetts and the United States for bringing on this mess you find yourselves in.

Let me illustrate these points --

1. Putting your land and other tribal assets into a Massachusetts corporation instead of leaving them in your Tribe, essentially puts your primary tribal asset under State control instead of Federal control. This makes it easier for the non-Indians and the

Town of Gay Head to control or influence your tribal land and other tribal assets through land use regulations, liens, seizures and the like. (See proposals 3 and 12). (In fact, that's your basic problem already -- unlawful state and non-Indian interference with your land and your lives despite the promise of Federal protection. So the settlement makes bad matters worse).

2. Transfer of the Cook land will have many strings attached. Non-Indians will have almost as much right to use it as Indians. And the land will be subject to tax-takings and foreclosures. For all practical purposes the "Cook land" will be "everybody's land" -- not "Indian land." So the proposal to "give" you the Cook land seems an empty gesture. (See proposal 5).

3. Transfer of the so-called Strock parcels also has many strings attached. For example, any members of your Tribe who might build homes on this land would find themselves kept under many thumbs -- including the Strock Estate itself, the Town of Gay Head and the Commonwealth of Massachusetts. (See proposals 6 and 12).

4. As to your beaches and shores. Not only you Gay Head Indians will not control the beaches and shores of your Common land, you will be required to share them with non-Indians. Yet the reverse is not true! Non-Indians will not be required to share or give up any of the beaches and shores in your Reservation that they have taken over. (See proposals 4, 5, 10, and 12(c)).

5. There is no mention of the substantial acreage of fractional holdings which the Town plans to take for taxes. Yet much of this land is vacant and many of you believe it should revert to the Tribe and become Common land again.

6. There is no mention of compensation for or the return of the hundreds of acres of your Reservation wrongfully occupied or claimed by non-Indians.

7. Most if not all the financial risks appear to fall on your Tribal Council or the Tribal Land Corporation. This could include the cost of surveys and the cost of buying the Strock parcels and the Menemsha Neck Lands at going land prices. In other words, if the federal government chooses not to provide the money, who will? (See proposals 6, 7 and 8). And if the money isn't provided, you won't get this land anyway.

8. And as I said before, accepting this settlement, "eliminates all Indian claims of any kind, whether

> possessory, monetary, or otherwise, whether aboriginal or under recognized title involving lands and waters in the town of Gay Head, and effectively clears the titles of all land owners in Gay Head of any such claims, whether asserted in the past, present or future." (This is a direct quote from the settlement). (See proposal 9).

In summary, Frank, the proposed settlement gives back very very little to the Gay Head Indians.

Out of your 3400 acre Reservation, your Tribe is given limited control over an estimated 200 acres. You lose most of your Reservation beaches and shorefront to the non-Indians. And you not only will have no say over what's left, you must share even that with non-Indians. There are so many "ifs, ands and buts" about the Strock and Cook parcels, we doubt they'll mean much. There is nothing about the "back-tax land." There is nothing about Tribal and individual Indian damages. And certainly there is nothing about letting your Tribe control its own Reservation.

IN SHORT, THE PROPOSED SETTLEMENT LEGALIZES EVERY TRESPASS -- EVERY STATE INTERFERENCE -- EVERY FEDERAL NEGLECT -- EVERY WRONG DONE YOU. IT LETS THE UNITED STATES, THE COMMONWEALTH OF MASSACHUSETTS AND THE NON-INDIANS ALL OFF THE HOOK, WITHOUT SO MUCH AS A SLAP ON THE WRIST.

Bluntly, Frank, we think the proposal is disheartening, discriminatory and insulting.

Clearly we think it in the best interest of your Tribe, your fellow Tribesmen and your Tribal Council to reject the proposed settlement and press your court case.

Now Frank, as to that case --

As you know, we don't feel the case is broad-based enough, either as to claims or as to parties. In its present form, the case fails to state the larger and most important part of your legal position. So your tribe is like a man going into a fight with his legs bound together and both arms tied behind his back.

We think the tribal and individual claims of the Gay Head Indians make alot of sense legally. So we believe you should put your best foot forward.

That means asserting all your individual and tribal rights to the entire Gay Head Indian Reservation. It means pressing for full possession and for full damages. It means joining all possible parties. And it means asking the Federal Judge to order the State Judges and the Town not to do anything that affects your Tribe or your Reservation until your case is finally decided.

Accordingly, Frank, as you can see by the enclosed Application to Intervene, the proposed Complaint and the supporting Memorandum -- we have given the Court the broadest possible view of your problem at Gay Head.

Basically, of course, under the law, we think all the non-Indian residents and claimants to your tribal lands are trespassers. Some are probably innocent. Others are probably not.

WE THINK YOUR RESERVATION IS FEDERAL SOVEREIGN LAND AND MASSACHUSETTS HAS NO POWER OVER IT. ACCORDINGLY, THE TOWN OF GAY HEAD, AS A POLITICAL ARM OF MASSACHUSETTS, ILLEGALLY ADMINISTERS YOUR RESERVATION AND THE AFFAIRS OF YOUR TRIBE. SO THE TOWN IS A DE FACTO TRIBAL GOVERNMENT, ACCOUNTABLE TO YOUR TRIBE, YOUR TRIBAL MEMBERS AND THE UNITED STATES.

In other words, your Reservation is your tribe's primary asset. No one should manage it except your Tribe. And no one should share it except members of your Tribe. And your Tribe and your Reservation should stay under federal protection.

Insofar then, as the 1869 and 1870 Massachusetts legislation deals with Gay Head Indians and the Gay Head Reservation, we think it is unconstitutional. And any decrees of the Massachusetts Land Court and the Dukes County Probate Court dealing with the title to your Reservation, are invalid.

So we think it is clear that all non-Indians claiming under this legislation or these decrees do not have a sound legal position.

Some of you asked about the individual shares of the Reservation your fellow tribesmen and families were allocated years ago.

We think they are legal both under Massachusetts law and policy before 1789 and under federal law and policy after 1789. In other words, both sovereigns not only generally recognized, but encouraged division of tribal land by and between tribal members in order to make best use of the land and foster a sense of ownership. But it remains tribal land.

We also believe the Gay Head Indians and the Gay Head Reservation have been federally recognized since 1789 and were similarly recognized by Massachusetts before 1789.

And we believe neither the existence of the Gay Head Tribe nor the Gay Head Reservation is properly a jury question. So in our opinion what happened in the Mashpee case was wrong and should not be allowed to happen in your case.

Obviously Frank, we hope the Court will allow your intervention so the entire range of individual and tribal Gay Head Indian claims can be considered. If the Court turns down your application, we believe you have solid grounds for appeal.

If you have any further questions don't hesitate to let us know.

Sincerely,

ROBERT C. HAHN

H/b

U. S. SENATE SELECT COMMITTEE ON INDIAN AFFAIRS
S. 1452
April 9, 1986

SUMMARY OF POINTS IN OPPOSITION TO THE GAY HEAD INDIAN LAND CLAIMS BILL,
S. 1452

Robert C. Hahn
William A. Hahn
Hahn & Matkov
40 Court Street, Rm. 920
Boston, Mass. 02108
1-617-523-2213

The following is a summary of the James group's (group of Gay Head Indians opposing the purported "settlement") concerns about the "Joint Memorandum of Understanding Concerning Settlement of the Gay Head, Massachusetts Indian Land Claims" (herein "Joint Memorandum"), the state legislation (S 2205) and the proposed federal legislation (S. 1452).

Joint Memorandum

1. Paragraph 1 is false -- while the Gay Head Tribe is a party to the federal lawsuit (No. 74-5826-Mc), it is not party to the joint memorandum. The Tribe was added as a plaintiff in the lawsuit after defendant's attorney questioned the authority of Wampanoag Tribal Council of Gay Head, Inc. (herein "state corporation"), a private, state-chartered, non-profit membership corporation, to represent the Tribe or any Indians in federal court or otherwise.

2. Paragraph 4 -- In reality the Commonwealth is making no land contribution because it is merely returning stolen property (the common lands) it originally took without compensation and in violation of federal law.

3. Paragraph 5 -- the Cook lands are subject to full state and local control with no restriction against alienation; thus, they will have no character as "Indian lands".

4. Paragraph 6 -- The Strock lands were purchased in federal bankruptcy court by four lawyers calling themselves Anchor Pacific Partnership for $100,000. Thus, the lawyers will be the principal beneficiaries of an appropriation of taxpayers money by Congress.

5. Paragraph 7 -- There is no guarantee the Menemsha Neck lands will be purchased.

6. Paragraph 8(d) states, "The alleged Gay Head Tribe and the Tribal Council on behalf of all persons of Indian descent hereby agree that this settlement is in full compensation for the claims so extinguished." (emphasis added). In fact, "all persons" do not agree and there is currently pending in the Massachusetts Appeals Court a suit challenging the state corporation's claim it may represent "all persons" of Gay Head Indian descent (Case Nos. 86-79,80).

7. Paragraph 9 states the joint memorandum shall not be "deemed an admission of the existence of a tribe". This being so, how can the state corporation contend it speaks for the Tribe while refusing to admit there is a tribe? And again, the Tribe is a party in the federal lawsuit but not in the joint memorandum.

8. Paragraph 10 -- all beach is stripped from the "Common Lands" which were stolen by the state. By contrast, one individual (Jacqueline Onassis) bought Gay Head property giving her exclusive rights to over one mile of Gay Head beach. In short, the non-Indians do not want the Indians to control any beach on the Gay Head peninsula which has many miles of beach.

9. Paragraph 11 — Not only the Tribe gives up all claims to sovereignty, but the Indians may convey part of the so-called restricted land to the town.

10. Paragraph 13 allows for "in-lieu" payments instead of taxes (taxes by another name) and allows the town to seize improvements on "Indian lands" and put liens on assets of the "Tribal Land Corporation". Also, the Indians must give up all rights to control the important fishing industry, and, the James group would like to know, what constitutes hunting with other than crossbow or firearm?

11. Paragraph 14 does not provide for federal recognition.

12. Paragraph 15 -- again, the Tribe is not party to the joint memorandum.

13. The so-called "Settlement Lands" are subject to a land use plan which means tight state and local non-Indian control over "Indian lands". Thus, in reality there will be no Indian lands or other Indian rights in Gay Head in the traditional federal sense. But the Indians must agree to complete extinguishment of all Indian claims in the future.

State legislation

1. Section 1(a) is false -- another action by the James group (No. 81-3204-Mc) which has been approved by the United States Solicitor General is pending in which there is a motion for relief from judgment; also, no mention is made of the case challenging the legality of the joint memorandum (Massachusetts Appeals Court Nos. 86-79,80) or a case challenging disbursal of funds to the state corporation in the United States Court of Appeals for the District of Columbia Circuit (No. 85-5920).

2. Section 1(b) is false -- there have been numerous land transactions.

3. Section 1(d) is false -- while the Tribe is party to the lawsuit (No. 74-5826-Mc) it is not party to the joint memorandum; also, as stated, the joint memorandum or "settlement agreement" is being challenged in state court as illegal.

4. Section 2(b) does not mention more than one lawsuit is pending.

5. Section 4(a) provides for "in lieu" payments (taxes by another name), liens on Indian assets and seizure and lease of Indian property; sec. 4(b) allows Indian regulation of hunting other than with crossbow or firearm (whatever that is), but does not allow Indian regulation of the important fishing industry or trapping; also, town zoning and a land use plan will apply to all "Indian lands".

6. Section 5 provides all state and local laws will apply to the so-called "Indian lands", thus assuring that in reality there will be no Indian lands or other Indian rights in Gay Head in the traditional federal sense.

Proposed federal legislation (S. 1452)

1. Section 2(1) is false because it does not mention the second case (No. 81-3204-Mc) brought by the James group and approved by the United States Solicitor General in which there is pending a motion for relief from judgment. Nor does this section mention the state case challenging the legality of the joint memorandum (Massachusetts Appeals Court nos. 86-79,80) or the United States Court of Appeals for the District of Columbia Circuit case challenging dispersal of federal funds to the state corporation (No. 85-5920).

2. Section 2(2) is false because numerous land transaction have occurred.

3. Section 2(4) is false because while the Gay Head Tribe is party to the lawsuit (No. 74-5826-Mc) it is not party to the joint memorandum or "settlement agreement".

4. Section 2(5) -- the Commonwealth and Town are simply returning land (stripped of the beach) originally stolen from the Indians in violation of federal law and without compensation; how is the return of stolen property a contribution?

5. Section 3(b) -- proposes appropriating taxpayers money to go to a group of four lawyers calling themselves Anchor Pacific Partnership who bought the land in federal bankruptcy court for $100,000; thus, the primary beneficiaries of the federal money would be the lawyers, not the Indians.

6. Section 4 provides for extinguishment of Indian title even though the state corporation is merely a private membership corporation with no authority to represent the Tribe or tribal members.

7. Section 5(a)(1)(c) -- Congress seems to be giving the state corporation authority to be the tribal governing body when no such body has ever been certified by the Secretary of the Interior after full and fair elections (See ONEIDA INDIAN NATION v. CLARK, 593 F Supp 257 (NDNY 1984)).

8. Section 6(a) -- no one knows the location or extent of lands to be received before legislation is passed and all Indian title extinguished.

9. Section 6(d) would give land to the state corporation which is not a certified tribal governing body and there is an acknowledged split within the Tribe.

10. Section 7 would extinguish all Indian claims to inherent tribal sovereignty.

11. Section 7(b)(3) gives broad legal authority to the state corporation when there is no federally certified tribal governing body pursuant to full and fair elections and an acknowledged split within the Tribe [See MORTON v. RUIZ, 415 US 199, 236 (1974)("The overriding duty of our federal government to deal fairly with Indians wherever located has been recognized by this Court on many occasions."); ONEIDA INDIAN NATION v. CLARK, 593 F Supp 257, 265 (NDNY 1984)("In view of the well-recognized responsibility of the government to deal fairly with all Indians, the Department's trust responsibility requires that it remain neutral with regard to various Oneida factions -- the government must deal fairly with all New York Oneidas, not just the Executive Committee.")].

12. Section 8 would release the United States from trust duties it owes other Indians and Indian tribes; also, there is no federal recognition in the bill.

13. Section 9(4) again does not refer to the other pending lawsuits.

14. Section 11 makes no mention that the joint memorandum ("settlement agreement") is already being challenged in the Massachusetts state courts as illegal.

Pending Cases

As stated above, there are several pending court cases dealing with the Gay Head Indians including one challenging the joint memorandum or "settlement agreement" which forms the basis for S. 1452. The James group strongly contends no federal legislation should be considered until these legal issues are finally resolved. All relevant materials have been submitted to the courts and we are simply waiting for the courts to act.

Finally, the James group points out the other major Wampanoag Tribe in Massachusetts, the Mashpee, firmly oppose the "settlement agreement". See attached letter.

RFD #2 — MASHPEE, MASSACHUSETTS 02649
Telephone: (617) 477-0208
Joan Tavares, President
Gkisedtanamoogk, Vice President
Selena Coombs, Treasurer
Clara L. Kelinui, Secretary

MASHPEE
WAMPANOAG
INDIAN TRIBAL COUNCIL

December 13, 1983

Gladys Widdiss, President
Gay Head Wampanoag Tribal Council, Inc.
State Road
Gay Head, MA 02535

Re: Gay Head request of support from the Mashpee Wampanoag Tribal Members for settlement of the Gay Head, Massachusetts Indian Land Claims.

Dear Gladys,

After a lengthy discussion about the joint memorandum of understanding concerning settlement of the Gay Head Massachusetts Indian land claims, our Tribal members voted unanimously on Sunday December 12, 1983 not to support this passage of legislation because of the language content as written in the following paragraphs:

Page 5 - Paragraph (d)

Congress will enact legislation that eliminates all Indian claims of any kind, whether possessory, monetary, or otherwise, whether aboriginal or under recognized title involving lands and waters in the Town of Gay Head, and that effectively clears the titles to all land in Gay Head of any such claims, whether asserted in the past, present or future. That legislation will also extinguish all claims of any kind by the alleged Gay Head Tribe, whether possessory, monetary or otherwise, whether aboriginal or under recognized title involving any other lands and water within the Commonwealth of Massachusetts and that effectively clears the titles to all land in the Commonwealth of any such claims, whether asserted in the past, present or future. The alleged Gay Head Tribe and the Tribal Council on behalf of all persons of Indian descent hereby agree that this settlement is in full compenstion for the claims so extinguished. This legislation shall not eliminate or affect the claim of any individual Indian which is pursued under any law generally applicable to non-Indians as well as Indians.

Page 6 - Paragraph 9

Neither the provisions of Paragraph 8 nor this Joint Memorandum of Understanding as a whole shall be deemed an admission of the existence of a tribe and are instead intended simply to extinguish claims made by any Indians, whether advanced by individuals, groups or tribes.

Page 7 - Paragraph 11

The Settlement Land shall be subject to an express federal statutory restriction against alienation. This statutory provision against alienation shall state explicitly that (a) no Indian tribe or band shall ever exercise sovereign jurisdiction as an Indian tribe other than to the extent agreed herein, over all or any part of the Settlement lands, or over any other land that may now or in the future be owned by or held in trust for, any Indian entity, but (b) the absence of such sovereignty shall not in any way prejudice Gay Head Indians in their efforts to obtain federal benefits available to Indians or to achieve recognition as a tribe. Notwithstanding the foregoing, the federal restriction against alienation shall permit the Tribal Land Corporation to convey a strip of land 50 feet wide beginning 100 feet inland from mean high water and 500 feet long, starting from the terminus of the West Basin Road and running in an easterly direction along an area of West Basin now used for mooring boats, so that the Town may construct a bulkhead and related structures at this site, subject to the limitations set forth in the Land Use Plan.

Page 8 - Paragraph 13

All Federal, State, and Town laws shall apply to the Settlement Lands subject only to the following special provisions, regardless of any federal recognition the alleged Gay Head Tribe may acquire:

(a) The Settlement Lands will not be treated as real property subject to taxation pursuant to Massachusetts General Laws Chapter 59, or any successor Stat Law, but the Tribal Land Corporation will make payments in lieu of property taxes to the Town of Gay Head or other appropriate entity on the former Strock Estate, if and when improvements are placed on those lands. The fraction of land subject to such payments shall be determined in accordance with the density requirements of Town zoning ordinances.

cont.

Under no circumstance can we support this kind of robbery of Indian rights. The laws are on the books and it is the aim and purpose of the powers to exterminate all Indian rights.

Should you have any questions regarding the above please contact me at 477-3063.

Peace,

Joan Avant Tavares

Joan Avant Tavares
President

JAT:cl

cc: Chief Flying Eagle, Earl Mills
Drifting Goose, Supreme Sachem
Slow Turtle, Commissioner on Indian Affairs
Mashpee Wampanoag Indian Tribal Council Board Members
Constance Cromwell, Tribal Secretary

I am Wamsutta - Frank B. James. My mother was born on Gay Head, Massachusetts, and my father was born in Christiantown, which is now West Tisbury on Martha's Vineyard.

At present I reside in South Orleans, Massachusetts.

For the past 29 years I have held the position of Director of Music at Nauset Regional High School in Eastham, Massachusetts.

I have been involved in Native American affairs in southeastern New England for may years. I was elected the first Chairman of the Massachusetts Commission on Indian Affairs when appointed by Gov. Francis Sargent in 1976.

I am the current leader and moderator of the United American Indians of New England, and I was the President of the Federated Eastern Indian League from 1974 to 1982.

I was a member of the Wampanoag Tribal Council of Gay Head, Inc., but I withdrew my membership because I beleive this state corporation is illegally representing the Gay Head Wampanoag Tribe.

In addition, I believe this state corporation is acting in ways that will destroy the Gay Head Indians' cultural, aboriginal, religious, hunting and fishing rights even under the federal laws designed to prtect these rights.

I strongly oppose the passage of this bill before you: S 1452 for the following reasons:

1. A state corporation, governed by the laws of an individual state, can not and should not represent an Indian tribe.

There is presently a suit before the courts of Massachusetts claiming that this state corporation had no right to sign this settlement proposal on behalf of the Gay Head Tribe.

Any decision on this Senate and Congressional bill should be postponed until that state suit has been resolved. I am sure our attorneys can answer any questions you may have on this suit.

2. Although I have withdrawn from the state corporation, the officers and directors have continued to use my name as a Gay Head Indian to obtain federal funds for the benefit of the state corporation.

I have never received any notice of federal grants that have been funded to the state corporation.

I have not received any information or results of project, surveys or studies that the state corporation has conducted including the census of the Gay Head Tribe and the petition for federal recognition.

I may have withdrawn from the state corporation but I cannot withdraw from the Tribe, but the state corporation has never informed me since my withdrawal about what it is supposed to be doing on behalf of the Tribe.

In fact, I have never received a current copy of the settlement proposal although I have read in the newspapers that the proposal has been modified since it was originally signed.

I believe the majority of the entire Tribe has not received a current copy of the settlement proposal.

This state corporation does not serve all Gay Head Indians as it claims.

3. The state corporation has used fraud and deceit to entice Gay Head Indians to support this settlement. Members of the corporation have told various Gay Head Indians they will get a free house lot if they support this settlement.

But they haven't told these Indians they will still have to get a mortgage to build a house, they will still have to pay taxes.

And if they don't pay, they will be kicked off the house lot.

And how may house lots are there supposed to be? This land that is to be purchased with the monies from this bill has not even been surveyed yet. Nobody knows exactly where it is.

Would you gentlemen as individuals buy a piece of property when you didn't know the boundaries?

And who is going to get a house lot? Is there going to be a house lot for every Gay Head Indian? Do you think if I wanted to move back home, as we call Gay Head, that I could get a house lot? But I will bet that officers and directors of the state corporation will get a house lot if this bill passes.

In addition the state corporation has not permitted all Gay Head Indians to vote on this settlement.

And it has promised federal monies which it can not deliver to individual Indians in exchange for support of the settlement.

Classified Ads

REAL ESTATE
For Sale

• A RARE CHANCE •

In a setting everyone dreams of, with [illegible] feet on the crystal clear, sandy-bottomed waters of Lake Tashmoo and spectacular views across Herring Creek, and the Vineyard Sound and Elizabeth Islands, this big, attractive [illegible] [illegible] living room and wonderful fieldstone fireplace, is set on 2.3 acres of prized land. [illegible]

Should you wish, a beautiful adjoining [illegible] site of 3.6 acres, with [illegible] of waterfront and a dock, is also available for [illegible].

• [illegible] CAPE •

Four spacious extra bedrooms and full bath in finished basement with private entrance make this attractive Cape a comfortable home for a large family or a great rental property. Contemporary interior features high-ceilinged living room with balcony, beams and skylights. With paved road access to Edgartown, near South Beach, this is a fine buy at [illegible].

• [illegible] MEADOW •

On beautiful West Tisbury acre, handsome 4-bedroom farmhouse-styled colonial has big [illegible] country kitchen, oak-floored dining room, [illegible] living room with huge fireplace and bay windows overlooking [illegible] acres of farmland. Also, there is a huge attached auxiliary building with [illegible] square foot main floor with many windows and skylights and a 400 square foot loft and basement area with separate furnace. Would make fabulous studio or workshop. [illegible]

BETTY LEE REAL ESTATE
MLS REALTOR
Box [illegible]
Vineyard Haven, MA [illegible]
(617) [illegible]

CHILMARK

Spectacular 3.5-acre house site with Vineyard Sound and Elizabeth Island views. Includes well and underground electricity, and deeded access to [illegible] beach and tennis court. [illegible]

REAL ESTATE
For Sale

NEW HOUSE — EDGARTOWN

Three bedrooms, 1½ baths, lovely area. Half acre. Construction price for quick sale at [illegible]. Call [illegible].

WEST TISBURY

Passive solar contemporary on 1.4 acres. Large rooms, 3 bedrooms, 2 baths, sunroom, hardwood floors throughout. Very large kitchen and family room, deck, car port. [illegible]. Adjacent building lot available at [illegible]. By owner. [illegible]

[illegible]

Siesta Key, Sarasota, Florida. Waterfront, 3 bedrooms, beach, tennis, boat dock, pool, good rental. Call [illegible].

MEADOW VIEW FARMS
FOR SALE BY OWNER

For sale by owner. New contemporary on 1 acre surrounded on 2 sides by greenbelt. Three bedrooms, 3 baths, master bedroom deck, Jacuzzi, hardwood tile floors, fully appliansed kitchen, fireplace, screened-in porch, large deck. Walk to tennis courts, golf nearby. Truly a unique home. Priced to sell. [illegible]. Call [illegible].

FOR SALE BY OWNER

Three-year-old house in Oak Bluffs with 3-plus bedrooms, 1½ baths, solarium, deck, fireplace, full basement, oil heat. Landscaped with extra buildable lot. [illegible]. Reasonable offers considered. Call [illegible].

NORTH SHORE [illegible] WATER VIEW

Cozy home in secluded section of West Tisbury with excellent water view and private beach rights. Four bedrooms, 2 baths, large open living/dining area with cathedral ceiling and brick fireplace. New oak and almond kitchen and new appliances. [illegible]. Owner, [illegible].

MEADOWVIEW FARMS

From the tiled entry, kitchen dining room and laundry, to the oak floors, recessed lighting, Velux skylights, cedar roof and copper flashing, this house bespeaks a quiet quality and attention to detail. The large European kitchen has a center island, self-cleaning oven, dishwasher and microwave oven. There are 4 bedrooms, 2½ tiled baths, 2 large decks, plus a loft-library with [illegible]

REAL ESTATE
For Sale

ISLAND CONSULTANTS LTD.

Personal service to prospective non-resident buyers of island property. Write Box [illegible], Vineyard Haven, Ma. [illegible].

WATER VIEW — EDGARTOWN

New 3-bedroom, 3-bath. Family room, full walk-out basement, large deck. [illegible]. Owner: [illegible].

EDGARTOWN CAPE NEAR BEACH

Substantial 4-bedroom, 3-bath. Hardwood floors, fireplace, cellar, deck. Trees, privacy. Thoughtful details. [illegible]. Principals. Call [illegible].

IN EDGARTOWN

One-bedroom home, new well, new septic, full cellar. Low cathedral ceilings, [illegible], completely furnished. By owner, [illegible]. Call [illegible].

COLONIAL CAPE — EDGARTOWN

Three bedrooms, 2 full baths, fireplace, full cellar, wrap-around deck, outside shower, [illegible], custom woodwork. Principals only — [illegible]. Call [illegible] evenings.

COMMERCIAL — EDGARTOWN

Main Street, 2-story building, approximately 750 square feet. Prime location. Write P.O. Box 784, West Falmouth, MA 02574.

EDGARTOWN

Dodger's Hole. New, 3-bedroom, 2½-bath contemporary Cape. Wrap-around deck, southern exposure, heavily wooded lot on cul-de-sac. [illegible]. Call (617) 627-4273.

IN EDGARTOWN

New, 3-bedroom, 2-bath Gambrel with large post-and-beam country kitchen, attached garage, full basement and many extras. Sits on a beautiful half-acre wooded lot. [illegible]. Call owner direct (principals only), (617) [illegible], days; [illegible], evenings.

EDGARTOWN

Darling 3-bedroom house for only [illegible]. Call Bevin Cushnie, 627-8443, Ocean Park Realty.

EDGARTOWN EXECUTIVE NEIGHBORHOOD

New construction. Three-bedroom Cape, modern kitchen with oak cabinets and GE appliances, frost-free refrigerator, self-cleaning oven and dishwasher. Living room with cathedral ceiling and fan, two sets of sliding glass doors opening onto spacious screened porch and deck. Located 1 mile to South Beach, paved road with town water and underground utilities. [illegible]. Call builder at (617) 627-[illegible] or (617) 627-[illegible].

REAL ESTATE
For Sale

OAK BLUFFS — FOR SALE BY OWNER

Four-bedroom, 2-full-bath, full basement, oil-fired heat and hot water, quiet neighborhood, over-sized garage, living room with fireplace and woodstove, fully appliansed. Principals only. Call [illegible].

REDUCED FOR EARLY SPRING SALE

New 3-bedroom contemporary, 2 baths, family room, bright walk-out basement and wonderful views. [illegible]. Owner: [illegible].

PLANTING FIELD WAY — EDGARTOWN

Five-bedroom, 4-bath home. Outstanding Quality! Privacy! Must see. Owner, (617) 627-[illegible].

BY OWNER — [illegible] ROAD, OAK BLUFFS

Owner-built, country-style 3-bedroom bungalow, [illegible] years old. Cozy, eat-in kitchen, living room with brick hearth and woodstove. Wide pine floors, beamed ceilings, shaded open front porch, spacious back deck. Full basement, attic. Nicely landscaped, walk to Lagoon, immaculate condition. Offered at [illegible]. No brokers, please. Call [illegible] after 4.

LAND
For Sale

LAND, LAND AND "MOORE" LAND

WEST TISBURY

Two-plus acre secluded homesite. Convenient to Lambert's Cove Beach. Only [illegible].

OAK BLUFFS

Two-third-acre lot. Abuts greenbelt. Gentle wooded slope with underground utilities and paved road. [illegible]

GAY HEAD

250° panoramic water views. Walk to beaches. Barn/beach house. 2.5-acre homesite with land court title. Walk to beach. $170,000.

[illegible] MOORE REAL ESTATE
[illegible] South Water Street
Edgartown, MA [illegible]
(617) 627-[illegible] • (617) 627-[illegible]

EDGARTOWN — OVER AN ACRE

Definite second-story water views. Near conservation area, minutes to beach, all utilities in. Asking [illegible]. Call 627-3311, days; 627-[illegible], evenings.

On Page 2, Line 3, this bill states that the land suit by the Indians has caused severe economic hardship to the residents of Gay Head because it has clouded land title thus preventing the sale of property.

That is a false argument. It is simply not true that land in Gay Head can not be bought or sold or that people can't get mortgages. It is a scare tactic being used by the Taypayers Association to frighten people.

If you look at the Dukes County Registry of Deeds you will find a list of properties bought and sold in Gay Head in the last 10 years that is longer than my testimony here today.

In addition I submit for the record the following real estate ads from the local Vineyard Gazette newspaper:

May 3, 1985:

February 14, 1986:

To this Indian, those prices are not severe economic hardship.

I am further opposed to this bill because it is nothing but another land grab by the whites against the Indians.

Who is going to get this 3 million dollars that is to be appropriated for this land? Not the Gay Head Indians!

Just 4 non-Indian attorneys who offered the U.S. Bankruptcy Court $150,000.00 if the federal government bought the land for 3 million dollars.

My math tells me that is a profit of $750,000.00 for each of the four.

And why should the federal government pay to buy Indian land when the Indians have a good claim to the land anyway.

Why not let the judicial process take its course.

Perhaps it is because the non-Indians beleive the Gay Head Tribe has a valid claim to its reservation.

In addition, under this bill, the Gay Head Indians will not own this land anyway.

Nor will the land be held in trust for them by the federal government. This bill goes against all federal Indian policy for the last 100 years which is to protect Indian land.

This land will go to another state corporation.

And who know what Massachusetts could do to this new state corporation in another 25 or 50 years.

Supporters of this bill say it doesn't matter how title is held because it will always be Indian land.

I say it was Indian land in 1870 when the State of Massachusets took it away from the Gay Head Tribe and made it a town even when the Indians voted not to have a town, but to keep the reservation.

And what good has Indian land done the Narragansetts in Rhode Island? How many Narragansetts are living on Indian land the federal government bought under their settlement proposal?

The Narragansetts are even supposed to ask permission from the state before they use their "Indian" land.

In exchange for this dubious benefit, the Gay Head Indians are supposed to give up all thier rights forever.

Page 3, Lines 6-25, Page 4, Lines 1-24 of this bill refer to extinguishing all aboriginal title and claims of the Gay Head Indians.

The United States has been trying to extinguish Indian rights since 1786. And this is just another example of trying to get rid of the Indian.

There are no hunting or fishing rights protected under this settlement. Out of the 16 miles of shoreline on Gay Head, this new state corporation for the Indian will have control of about 15 feet. And they could lose that too because it is subject to taking under this settlement.

Once this bill is signed all that could be Indian in Gay Head will be gone forever. For the economic benefit of a few officers and directors of the state corporation and the white land owners, the Gay Head Tribe will forgo all its rights forever. Even if the federal government re-recognizes the Gay Head Tribe still exists and never has been terminated, the remainder of the reservation will be gone and can not be returned to the rightful owners. Those Gay Headers who presently do not live down home will be driven further away from their heritage and their roots.

I say the passage of this bill will destroy all you hope to preserve. You will unleash unrestrained building in Gay Head with the passage of this bill. Look what happened in Mashpee which became the fastest growing town in Massachusetts.

And look what this growth has cost them. The Indian can't afford a condominium in the town where he was born and he can't even find a place to rent.

Now even the wells are polluted and the water is not safe to drink.

In addition passage of this bill will create more factionalism among the Gay Head Indians themselves as they fight to see who will get a house lot and who will get all the federal money that has been promised by the state corporation.

I ask if this is part of the scheme of those who favor this bill? To me it is another example of divide and conquer the Indians.

Furthermore, I challenge you gentlemen to walk in this country for over 60 years with a face of my color, and I am quite sure that long before that time you will realize that this bill smacks of pure racism.

Why does the Taypayers Association favor this bill?

Why are they opposed to federal recognition for the Gay Head Tribe? Why are they afraid of the Indians? In the long history of this suit, not one Gay Head Indian has said the purpose was to take someone's house and land.

Because the non-Indian landowner puts up no tresspassing signs, does he think the Indian will do the same? Because the Indian wants free access to the beaches, does the taxpayer think he will not have it? Why does the Taxpayers Association want to limit the rights of the Indians? To get rid of them?

In my opinion, the true, honest resolution of the Gay Head land claims can be accomplished by returning the entire reservation to the Gay Head Tribe and allowing them complete sovereignty over their own affairs.

All land owners would retain title to their land. They could give it to their children or leave it to someone in their will.

But if they wished to sell it, the Tribe would have the right of first refusal.

With the return of the reservation, the Tribe would have a base from which they could generate income to support themselves and funds to purchase the land.

I am not proposing a hair brained scheme. I live next door to where it has been accomplished: The Cape Cod National Seashore.

There, land is being preserved and protected for the generations to come yet people live in house and towns quite successfully within its boundaries.

And make no mistake that the Gay Head Indians could govern themselves quite successfully also. They have lived on Gay Head since 2270 B.C. They lived there well and in peace until the white man came.

With the return of the reservation, they could live there another 2000 years.

I must say that I do not know if what I and others who are opposed to this bill say here today is going to make any difference at all. I wonder, in view of the way the Indian has been treated by the United States in the past, if this hearing is a charade.

I know the forces and resources gather in favor of this bill are many.

I know there are enormous political pressures being exerted to pass this bill. I know some of the members of the Taxpayers Association used to work for the federal government and I know what kind of influence that means.

Those of us opposed to this bill haven't got that kind of influence. I can't even get a meeting with my congressman because I oppose this settlement.

I also know the lies that are being told: that only a few of us are against this bill - not so. The majority of us Gay Headers are opposed to this bill and this settlement, but Indians don't play power politics well

And we don't have the resources to combat the lies.

For example, the Town of Gay Head paid for the selectmen to come here today.

The state corporation paid - with federal money - for its officers to come here.

The Native American Rights Fund uses federal monies to pay for a high powered attorney to come and go in Washington to lobby as he pleases.

Members of the Taypayers Association can well afford to pay to come if they don't already live in the Washington area.

I paid my own way down here today. In addition I have to lose income from my job to attend this hearing.

But I will not agree to the termination of the Gay Head Indians which this bill will do. I will not agree to signing away the land. The land is sacred.

And I will not agree to signing away the rights of all the Gay Head Indians to come.

I ask you in your deliberations on this bill to remember the Indian philosophy that you are responsible for your actions unto the seventh generation.

Seven generations is not a very long time compared to the 4,000 years the Indians have lived on Gay Head.

The law makers who pass this bill will destroy forever the Indian culture of Gay Head just as if they dropped a nuclear bomb on Gay Head.

In fact, S 1452 is a nuclear bomb for the Gay Head Indian. The fall out will be with us for years.

May I remind you in conclusion that the Indian way is not necessarily the white man's way.

As Sitting Bull said:

If the Great Spirit had wanted me to be a white man, he would have made me so in the first place.
He put certain wishes and desires in your heart.

He put other wishes and desires in my heart.

Both are good in his sight.

It is not necessary for eagles to become crows.

Wamsutta J.
APRIL 1986

Senator Andrews and Members of the Committee:

Thank you for inviting us to present our views concerning our future as Indians. My name is Thelma Vanderhoop-Weissberg. Next door to my home in Gay Head is where I was born.

With the exception of one summer and six winters I have spent my entire life of nearly 59 years on Martha's Vineyard. After attending grammar school in the Little Red School House in Gay Head for 7 years, I graduated from Vineyard Haven High School 18 miles away. It was there I received my first hurt because of being Indian.

Growing up in Gay Head was very special to me. Being the yougest of 8 brothers and sisters helped also. One remembers attending the one room school, walking there each day, playing outside beside the little pond, catching frogs, laughing when the boys were sent for a bucket of water and returning with it 1/2 full, reading from the same standing chart with big big pages and knowing your people before you were taught from that same chart. One also recalls avoiding the pot bellied stove in the center of the room and watching at recess as the silly boys crept up close to the outside john and returned to tell us "the Teacher is smoking in there". We recall being in awe at a visiting very tall Chief and running around at Pow Wow times and going to play in the clay up to our necks on Sunday afternoons. There were no "No Trespassing" signs then and with three others I sometimes helped deliver the Cape Cod Times on the back of an Ox. We Beach Plumed in the Fall and picked grapes, wild strawberries, goose berries, and box berries. I remember rising early and riding down to the cranberry bogs with my father in an Ox cart. One recalls these things with great pleasure but at the same time I recall standing behind the storm door when I was suppose to be on my way to the cliffs to sell pottery that my sisters had made to help put them through College, I hoped the tourists would stay home. I wasn't happy with the tourist that took lots of pictures and asked silly questions like, "What time does the light house go on?" You would tell them, " at sunset" and they would say, " yes, but what time tonight, since it's foggy?"

One remembers when these cliffs vividly showed colors of red, white, black, grey, yellow and purple. Today most of the color is gone. I feel sad remembering the day my husband looked out the window at the red clay in the water at the base of the cliffs and said to me " It looks like the cliffs are bleeding and Gay Head is bleeding also and losing it's right as an Indian town."

In 1972 the Federal Government published the results of a study to preserve the cliffs, The Gay Head Cliffs are a registered National Monument. They determened after the study that a protection improvement would range from $13,500.00 for the less effective improvement plan to about $~~33,000.00~~ 33 million for the most procted improvment plan. The study of the considered improvments indicated that the cost of producing the protection greatly exceeds the benefits derived and therefor it is economically unfeasible to provide an erosion control measure.

One distincly recalls a respect for the non-Indians then that lived among us. Listening as they neighborly chatted with my Mother and Father at church and town meetings and whenever they met on the Island. This for me has all changed. By the newspapers I see I am one of the group that tells lies when we go to speak to the Govenor.

In 1970 I was elected to the office of Selectmen. While in office I discovered that we did not have any more rights as an Indian than the non-Indian had. Also that the Common Lands and Cliffs were not being held in Common for the Indians. I learned how many rights had been taken from us. After doing research I discovered how much the Federal Government had allowed Massachusetts to take from us. There is a letter in the Dukes County Court House that states " The majority of the inhabitants of Gay Head regard the immediate partition of our Public Lands to be premature and unsafe and as we believe, must be attended with disastrous consequences to us as a people, therefore we respectfully but earnestly pray that no measure be taken to that end."

From reading House Documents #2020 of 1939 I learned that Chapter 30 was amended so that Indians in Massachusetts could no longer shellfish for their own consumption. I have not dug clams or quohogs for years because I refuse to pay $30.00 each year to get a bucket of clams.

At the present moment our Herring Creek stands unused. Gay Head has had a history of catching Herring. Years ago it supplied boats with bait and the large Mackerel Seiners came to Menemsha for the Herring. Today Herring is still used for Lobster bait. Obviously it is the decision of the Selectmen not to allow anyone to lease it. A brother of mine who has been a fisherman all of his life is getting calls every day about why no one is catching Herring. The Gay Head Selectmen are the only Board of Selectmen on the Island that rents out or leases docking rights to non-residents.

Last year the state of Massachusetts refused to issue a license to my Brother to go dragging for Flounder in Menemsha Pond even thou two other non-Indians from the next town have licenses and they can fish on the pond including our side. Our people were famous whalemen. What kind of an Indian would not want to get back their fishing rights? Maybe the Widdis' Group State Organization is afraid too many people would want to come to Gay Head and Scallop but I doubt it very much. I know how hard it is. In the first place, one never knows how long the season will last.

Massachusetts even lets the Tourist Bus take advantage of us by allowing them to contribute nothing to Rest Room facilities and allows them to park all over the place.

Massachusetts stepped in and took a town road the leads to where our shell fesking boats are anchored. Rich people that would have to look across the dunes influenced the state to make it a non-access road. There are those of us that have no way to drive to our land or a place to park our cars. Massachusetts also allows the town of Gay Head to place Hunting restrictions on places to hunt. Our hunting rights should be preserved.

About now I feel there are those that are saying what kind of an Indian sells her land. I have sold some. What does one do if they have deteriorating health problems? My husband is no longer living. I have spent a great deal of money on phone bills, attending off Island meetings and trips to Boston and Washington. These have been paid out of my own pocket, not paid by the town of Gay Head or a State Corporation, or Government funding.

I don't have a position in the town that pays my health benefits and gives me power to do as I want. My health problems haven't been made any better by finding a Deer Head in my mail box as by husband was recovering from a heart attack, by finding nails in my drive way and recieving a hate letter that included my deceased husband's name.

Massachusetts land court has taken, is taking and will continue to take land from us and send us a check for what they want. This should be stopped and also a preventative measure included in a settlement package. Not long ago every family in Gay Head was petitioned in land court and finally sent a check for 22¢ to $50.00, a few more and some less. I have been told that this same land is being sold for $1,194,000.00. There are times one has to sell or lose out if your interest is being taken by the Massachusetts land courts or the town.

Rights of ways should be included in the settlement. We have land surrounded by Mrs. Oanassis and can not get to it.

In Massachusetts the law is that all great ponds should have an access to them. Squibnocket Pond is a great pond. In order for any one to get to that pond, one has to get the key to the gate from the Selectmen.

Massachusetts allowed the taking of Christiontown in North Tisbury. Lot # 8 was set off for a meeting House by the state legislature. In our settlement I feel this could be included to return Christiontown to the Indians of Martha's Vineyard. The meeting House was built as a school house in 1829. It was taken by the County Commissioners in behalf of the County fo Dukes County under privisions of Chapter 78 of acts of 1939. It was taken by eminent domain as an Indian Memorial.

The Federal Government allowed the Historical Society to have the Fresnel lenses from the Gay Head light House when the light was electrified. Not once did they consider making a proper place for it in Gay Head.

On the issue of voting in the town of Gay Head, don't be mislead. From the voting list, March 1986, there are 220 voters listed, 67 Indians and 12 spouces. So you see on any issue the non-Indian could have the vote.

As for the Widdiss Group Corporation, I found a couple of statements from " The legal Conscience", selected papers of Felix S. Cohen". It reads " a source of potential strength for any tribal organization lies in the role which it may assume as protector of the rights of its members". A rubber stamp council that simply takes what the Indian Office gives it is not likely to establish permonent foundations for Tribal autonomy. Rubber is peculiarly perishable material, and it gives off a bad smell when it decays.

As for the tax-payers association, I am ashamed it has many, many Jewish members. How I wish my husband was living. He was a Rabbi. Perhaps he could explain to me clearer the situation in Gay Head. I Hope and pray the same does not go on in the Middle East.

In closing I find it necessary to tell you I no longer attend Gay Head Town meetings. Not since Henry Sockbason the lawyer for NARF attended the meeting where we voted on the land sttlement. Henry Sockbason was observed and heard using obscene four letter words each time I stood up to speak.

Please do not vote this Bill thru. We are better off as things are now. Perhaps there could end up being two bards of Indians in Gay Head. I hope not.

Thank You.

Senator Andrews and members of the Committee:

I am Adriana Giles Ignacio a member of the Wampanoag Indian Tribe of Gay Head. I graduated from the Institute of American Indian Arts in Santa Fe, New Mexico. My husband is an enrolled member of the Northern Ute Tribe of Fort Duchesne, Utah and we have three daughters. We have just moved back to Gay Head from Utah. I have lived among Indian people and participated in Indian functions all of my adult life.

The Federal Government has a responsibility to correct an error that they made when they allowed the State of Massachusetts to wash their hands of us. From the outset, the interference and stance of the Gay Head Taxpayers Association has resembled the paternalism which historically has characturized non-Indian relations with tribes nation wide. Sadly, the "divide and conquer" maneuver has worked once again.

Two groups stand to gain by the present agreement: the Taxpayers Association and the group of lawyers holding the Strock lands. How can we be given something that was and is ours to begin with? And why do we need Taxpayer Association Approval before exercising Tribal self determination in assuring for future generations what was and still is ours? It is not right for others to define what is or is not of value and meaning in our Tribal heritage.

The land settlement as it reads is saying that here after we can no longer claim lands or even excersise our hunting and fishing rights which to some of us is our only source of income. The settlement is an insult to any intellegent thinking human being.

I object to the subdivision of some of the lands that the Taxpayers Association has decided that we could acquire. For example, the Common Lands but not the beaches that always were a part of the Common Lands. The Strock Lands have not been surveyed. We do not know what the actual acreage is. Some of the lots have no right of way. We do not know how much of the Strock Lands can be built on due to town and state zoning regulations concering the wet lands.

As I understand the Federal Government will not spend millions of dollars on lands that will not be held in trust and with so many strings attached. For example: Item #5, pertaining to the Cook Lands:

1.) shall not be part of the settlement Lands.

2.) shall remain subject to taxation and foreclosure in the same manner as any other privately owned property in Gay Head.

3.) any structure on this property is subject to Federal, State and local laws including the Martha's Vineyard Commission.

If this settlement should go through as it now stands, the only protection we would have is that the lands be put in Federal Trust Status.

I ask you to be just and fair to my children and the remaining Indian population of Gay Head. We would like to feel it is still our home. It is all we have left that we can call Indian Lands. The land and the people are one in the same.

Thank you for this opportunity to address you and this Committee.

Adriana M. Ignacio

April 8, 1986

Dear Mr. Chairman and Members of the Committee.

I'm sorry I cannot be present at this meeting. However I'd like to share some of my views

1. Federal recognition - yes
2. $3,000,000 to make three lawyers instant millionaires - no

Federal recognition for fishing rights and beach rights will cost the gov't nothing. Those people up there are wealthy in their own rights. Check into the property they own. Selectman was or delving into real estate. Their children will inherit lots of property. One Gay Head person recently payed $180,000 for a piece of property. Are they poor?

There is enough land on the books the town can claim and use for their housing. Instead they are claiming it personally and has some on the market now.

2/

I am distressed because my family was stripped of their land and kicked off of Gay Head.

I was fifteen yrs. old when that happened. Walter Manning, now deceased was a selectman at the time and had my landlord, Mr. Hornblower to kick us off the property as being undesirables. As a result there are several homeless people in my family due to age and circumstances. Manning was a friend of Hornblower. That's the kind of people who are still running the town. they are self serving. I've repeatedly asked for assistance in trying to recover some of the land.

I'm enclosed a copy of the deed of where the town took my grandfathers land.

I'd like to say more, but do not have the time.

Shirley Jardin

Know All Men By These Presents, that I, Abraham L. Rodman, of Gay Head, County of Dukes County County, Massachusetts for consideration paid, grant to the inhabitants of the Town of Gay Head of the County and Commonwealth aforesaid with warranty covenants the land in the said Town of Gay Head, being all of the real estate which I own, consisting of land and buildings situated in said Town of Gay Head. Also all of the real estate which I own in said Dukes County. wife of said grantor release to said glantee all rights of dower and homestead and other interests therein. Witness my hand and seal this twenty-third day of January 1929

Walter Manning Abraham L. Rodman Seal
Marcellus R. Johnson

Commonwealth of Massachusetts

Dukes County ss January 23rd 1929 Then personally appeared the above named Abraham L. Rodman and acknowledged the foregoing instrument to be his free act and deed, before me Charles W. Vanderhoop. Notary Public. My commission expires March 21st 1930. Not'l Seal.

Edgartown, Jan. 23 1929 at 2 o'clock and 0 minutes P.M. Received and entered with Dukes County Deeds Book 128 Page 17.

Attest Philip J. Norton

Register.

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE. I AM ROLAND JAMES A MEMBER OF THE GAY HEAD WAMPANOAG TRIBE

BILL 1452

I come before you today to speak in opposition to the passage of this bill. Since the dates and figures have been stated over and over again in the many legal documents that have been filed by all parties during the 12 years this settlement proposal has been debated, and as we are all aware that statistics can be manipulated to bolster any side one takes in an argument I do not feel the they need to be repeated. Instead I am going speak of the negative impact this bill's passage will have on my people

The thing that disturbs me most is if you allow this legislation to pass never again will a Gay Head Wampanoag, whether singularly or as a "Tribe", be able to sue fo land. Land which is rightfully owned by my people. I feel very strongly that it is wrong for ANY of us, (Indian or non-Indian) to feel that we have the right to negotiate or legislate away the rights of unborn generations.

The State Corporation has told people that if the settlement, as written, goes through they will be able to use the land as they see fit (perhaps to build homes, or make a living). This sounds pretty good on the surface. We should realize that once Government, be it state or federal, gets involved, one can't even build a dog house without having to go through endless paper drills, impact studies, conferences, meetings, and the like. In short, loss of control FOREVER. The State Corporation is willing to settle for a mere drop in the bucket. If this bill is passed we get a little less than 5 percent of our own land. Land that we can never hope to get.

I am also disturbed by the fact many non-Indians are backing this bill for their own finicial gain. (I suspect there are a few Iandians as well.) Also if this bill passes 4 lawyers are going to substantially increase their bank accounts at the expense of the Gay Head Indian people. Members of the committee, you have a chance, by not recommending the passage of this bill to do what is right and just! To allow my people, the Gay Head Wampanoag, to regain all that is rightfully ours. Although the amount of land is small in comparison to what the Indian had, at least the Gay Head Indians will have our own land to care for in the spirit of our ancestors.

The recent statements by the Taxpayers Association in which they oppose the granting of federal recognition should be taken for what they are. Racist. I would suggest that if it should "get out" that they are living amoung a "Tribe of real Indians" they feel the value of their property would go down. Also it would put their chances of getting clear title to the land in jeopardy. (It may even mean they would have to get off of the land) Wouldn't that be a switch.

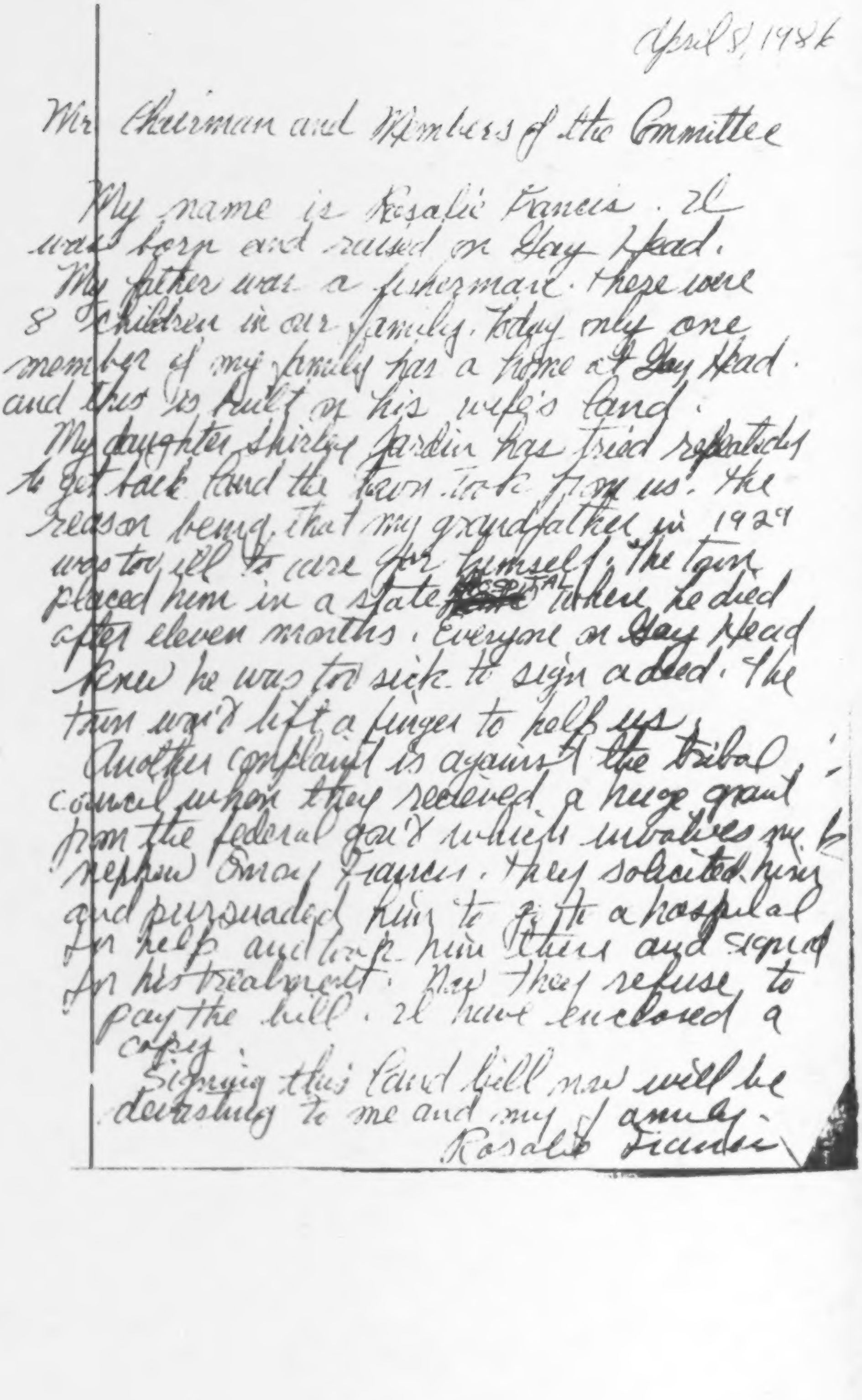
I would also like to state that the State Corporation does not represent me in any way in this action. I withdrew when I realized they were operating in a way that was not for the overall good of my people. (since I withdrew I have not been notified of any of their meetings nor have I received any statements, notices, etc.) Although I withdrew from the proposal I am still a member of the Gay Haead Wampanoag.

In reading many of the documents that have been written dealing with the settlement proposal I can't help but get the feeling that many times decisions had been made based solely on the politics of the situation. I can't help but feel uncomfortable knowing that a group of my own people are willing to sell me out. I think that hurts the most.

Let me add that most of my adult life was spent serving in the United States Navy stationed at various places throughout this country and the world. While serving my country I thought the State Corporation was looking out for our best interests. For 12 of the 16 years I served, this settlement has been in and out of the courts, been in front of committees, and had countless words written and spoken on it. If this bill passes my people will be destroyed.

In closing I would like to ask the members of the committee to realize that the Gay Head Indian people will not benefit in any way if this bill is passed. The majority of my people do not want it passed. By your recommendation that the bill not be passed you will insure that the Indians of Gay Head will be able to enjoy all that is ours by birthright. All that is ours by being born a Gay Head Wampanoag.

Roland F. James
9 April 1986



April 8, 1986

Mr Chairman and Members of the Committee

My name is Rosalie Francis. I was born and raised on Gay Head. My father was a fisherman. There were 8 children in our family. Today only one member of my family has a home at Gay Head. and this is built on his wife's land.

My daughter Shirley Jardin has tried repeatedly to get back land the town took from us. The reason being that my grandfather in 1929 was too ill to care for himself. The town placed him in a state ~~home~~ HOSPITAL where he died after eleven months. Everyone on Gay Head knew he was too sick to sign a deed. The town won't lift a finger to help us.

Another complaint is against the tribal council when they recieved a huge grant from the federal gov't which involves my nephew Omar Francis. They solicited him and persuaded him to go to a hospital for help and took him there and signed for his treatment. Now they refuse to pay the bill. I have enclosed a copy.

Signing this land bill now will be devasting to me and my family.

Rosalie Francis

TERRY WATKIN, M.D.
65 CAMP STREET
HYANNIS, MASSACHUSETTS 02601
TELEPHONE: 771-1673

March 14, 1986

Dear Mr. Francis,

We were in contact with the Wampanoag Indian Council and they feel they are not responsible for your bill.

You will have to resolve this with them as we are not responsible for these kinds of matters.

Sincerely,
Fannie Smith
Bookkeeper

State Road
Gay Head, Mass. 02535
April 5, 1986

Mark Andrews, Chairman
Select Committee on
Indian Affairs
United States Senate
Washington, D. C. 20510

Dear Senator Andrews:

My name is Helen Vanderhoop Manning. I am a Gay Head Wampanoag Indian from Gay Head, Massachusetts. I am also a retired elementary school teacher. I taught for thirty-five years, and twelve of those years were in the Town supported Indian School at Gay Head. Also, I am a member of the group being represented by Attorney Robert C. Hahn at the hearing on S. 1452, a bill to settle Indian land claims in the town of Gay Head, Massachusetts.

This group which Mr. Hahn represents is the group which was instrumental in the initial formation and organization of the Wampanoag Trible Council of Gay Head. Our group spearheaded the subsequent filing and prosecution of the so called Indian Claims Suit in the Federal District Court. Presently, due to changes in the leadership of this body, and subsequent controversial and unfounded concessions in negotiations my group and I find ourselves now as party plaintiffs in this litigation and intervenors against this body.

At this time I seek to state those essential facets to the maintenance of Indian culture and identity here in Gay Head that I feel are missing from the present state of settlement. I realize that many of these items I will mention have been negotiated and revised in the present agreement. Others, to my information have never been raised. They are as follows:

1. Conveyance of the schoolhouse to the Tribe. (The only schoolhouse ever in Gay Head)
2. Conveyance of the Cook Property to the Tribe without restriction.
3. Conveyance of the Herring Creek as part of the Common Lands to the Tribe without restriction.
4. Conveyance of all the beaches as part of the Common Lands to the Tribe.
5. Conveyance of and access to the Gay Head Cliffs as part of the CommonLands to the Tribe consistent with exclusive right of Indians to dig clay for pottery and provisions to protect and maintain this national resource from unbridled use.
6. Conveyance of, with right of access to, all the unclaimed lots in Gay Head to the Tribe.
7. Access to by Tribal members , not the general public, and conveyance of immediate areas surrounding Toad Rock, Elephant Rock, Ring Rock, Cooch Pond, Witch Pond, Black Brook, Silas Paul's grave, Mittark's grave, and the Gay Head Pound to the Tribe.

8. Recognition of Indian Hunting Rights with administration by Tribe.
9. Recognition of Indian Fishing Rights with administration by Tribe.
10. Provision to insure right of way to all lands conveyed to Indians in original set-off as well as restriction upon rights of non-Indians to partition and/or involuntarily convey lands from any Indian who maintains an ownership interest in such original set-off lands.
11. Right of first refusal from the Town to Tribal members to redeem land put up by Town for tax sale.
12. That the provision regarding a release of all Indian claims to Gay Head land involved in the law suit against the Town to be phrased so as not to cause any Indian rights to be relinquished or impaired in any way.
13. Access to old Ancient Ways in Gay Head.
14. Land owned by the Tribe to be held without restriction.

Neither my group, nor I seek to obstruct settlement or to confuse the issues, rather we hope to clarify and direct focus upon what claims, rights and intent lie at the core of Wampanoag heritage here in Gay Head before they are prematurely and formally settled away.

In December, 1985, I received a grant from the Massachusetts Council on the Arts and Humanities; a part of which includes collecting oral histories through interviews with representatives of families whose ancestors were on the 1870 census role. Such a project is very necessary in creating an awareness among the Indians of Marthas Vineyard of their group's contribution to the development of Martha's Vineyard - especially the Youth. The landmarks mentioned above are a vital and spiritual part of the Tribal history of the Gay Head Indians. There is much urgency in undertaking this project for much of the oral history has already been lost. Our Tribal History needs to be written. Literature exists for the history and culture of Gay Head Wampanoag Indians, but the quality of that literature is very uneven. At its best it compares well with the finest scholarship and most interesting reading to be found anywhere. At its worst it may take the form of malicious fabrication. Sometimes, well-intentioned writers give false impressions of reality either because of thier own limitations of mind or because they lack adequate information. In increasing the awareness among the Indian population on and off the Island, of the richness of their culture and heritage the awareness and appreciation of the non Indian population in our community summer and winter; the non-Indian population of the Island and the whole United States of America is increased. My intent is to put Indians properly back into the central role in their own history and into the history of Marthas Vineyard and the United States of America as well. Bringing everyone's realization to the fact that the Indians were and are participants rather than obstacles to the creation of American society and culture.

I do not totally oppose this agreement and accept for the most part the provisions contained therein, and further I acknowledge the services of Attorney Tureen and Attorney Sockbeson and the current leadership to bring this document about. However, I feel that this agreement does not go far enough to accomplish what was originally intended in order to preserve and maintain Wampanoag culture and heritage for our future generations.

It is my firm opinion that the current agreement amounts to minor tokenism and grave shortsightedness. I would hope to avoid a settlement which would ring hollow and meaningless in the future. Without the inclusion of all these items for full consideration there can be no true or lasting settlement. I will not support such a settlement which turns its back on the heritage and identity of our proud culture and will remain steadfast in my vision of the revitalization and furtherance of the tribal values and principles of our people.

I oppose and condemn majority rule which can relinquish and wipe away these essential facets of our history and culture against the will amd consent of the minority. We seek to have minority rights considered and understood - when they involve essential and fundamental Indian traditions and interests. Tribal rule would never allow the whims or interests of any group or family be they majority in number or not to hold sway over the fundamental tradition closely associated with our identity. My group and I seek to act as constructionalists to raise the level of negotiation to bring about a final complete resolution of all the afore mentioned claims in a manner which will strengthen our Indian Heritage and identity and not bury it. We remain committed to provide support and invaluable input to the rebirthing of the Wampanoag customs and ways here in Gay Head.

Helen Manning
Gay Head, Massachusetts

OPPOSITION TO THE GAY HEAD INDIAN LAND CLAIMS BILL

BY BEATRICE GENTRY

Chairman Mark Andrews and members of the Senate Select Committee on Indian Affairs; my name is Beatrice Gentry and I am submitting testimony against bill S 1452. As an Aquinnah Wampanoag from Gay Head, Massachusetts, I am a graduate of Framingham State College, class of 1932. I'm a former Bureau of Indian Affairs teacher having taught 7 years at the Kiowa Indian School at Lawton, Oklahoma from 1934-41. I studied at the Pine Ridge Summer Institute in South Dakota in 1935 and was the only Native American Instructor at the Summer Institute for Indian Education at Chilocco, Oklahoma in 1936. I taught in the public school of Wagoner, Oklahoma in 1959-64. I retired from the Chilmark, Massachusetts public school, a two room school serving grade 1-6 where the Wampanoag children attended from 1965-75. I helped establish and was a member of the first Native American Commission on Indian Affairs in Massachusettts history from 1973-76. I was the first President of the Wampanoag Tribal Council of Gay Head serving two terms from 1972-76. It was during this time that the Gay Head Wampanoag Land Claims suit was filed in Federal District Court.

On December 26, 1974, the selectmen of Gay Head and the Town were served papers in a federal court action brought by the Gay Head Tribal Council. The object of the lawsuit is the return of the Common Lands. This paper will help explain why the Gay Head Wampanoag Tribal Council felt it necessary to bring this action.

For over 3000 years our tribe has owned and occupied land on Martha's Vineyard. Between the time of the Revolution and 1870, the Commonwealth of Massachusetts respected our rights and treated our land as a reservation. Some of our land was set off to individaul members of our tribe, but much land remained undivided, and was termed "Common Lands". This was the sitution until 1870, when Massachusetts decided that it would be better if the

Wampanoags could be just like everyone else. The result was a resolution which dealt with the "Indian problem" by abolishing the State Reservation of Gay Head, and creating in its place the Town of Gay Head. Our Tribal lands known in the 19 Century as " Common lands" were simply deeded to the town with neither permission from, nor payment to the Tribe.

It is not difficult to see that the law which established thed the Town was an attempt to extinguish the legal existence of the Wampanoag Tribe. Nor should it be dirricult to see why we consider the transfer of our Tribal Lands grossly unfair. Before 1870 the Tribal Lands were owned jointly by the members of our tribe. After 1870 they belonged, according to the Massachusetts legislation to anyone who lived in the Town.

In addition to believing that the 1870 transfer of the common lands was unfair, we know that the transfer was illegal. The U. S. Constitution gave the federal government the exclusive power to deal with Indians, and in the exercise of that power, Congress enacted the Indian Nonintercourse Acts. Since 1790 these acts state that any transfer involving Indian land must have the approval of U. S. government. Since the federal government never consented to the 1870 transfer, it is our position that the 1870 transfer was void, and that the Common Lands must be returned to the Tribe.

From what has been said so far, it can be seen that we would want the lands returned because they were illegally taken from us. But this is not our only reason for pursuing this issue. An equally important reason for our determination lies in the fact that the federal government only affords full Indian status to tribes which have land which is subject to a restriction against transfer much as that contained in the Nonintercourse Act. At present the Wampanoag Tribe is not eligible for the educational and economic development programs which the federal Bureau of Indian Affairs provides for other Indians. We are also considered ineligible for assistance provided other Indians by the Public Health Service. These are rights which we should share, but rights which we cannot obtain until we regain our land base. Hence the Common Lands constitute not only our legacy from the past, but a major hope for our future.

If we are successful in achieving the return of the Common Lands they will belong to the Wampanoag Tribe. The Tribe will care for these lands in the future as it has in the past. And the same Noninter course Act which invalidates the 1870 transfer to the town, will insure that they remain in the hands of the Wampanoag Tribe of Gay Head.

I strongly urge you to vote against passage of S. 1452 for the following reasons:

1. The "Gay Head Wampanoag Indian Claims Settlement Act of 1985", is disastrous legally and morally for the Gay Head Wampanoag tribe. In exchange for extinguishing all Gay Head Wampanoag land claims everyone benefits except the Wampanoag Tribe.
2. The federal government also allow the state off the hook legally, for it's violation of the 1790 Non- intercourse Act. Federal trustship must be granted before the land settlement is made. Then and only then can we be assured that the Gay Head Wampanoag Tribal interest will be secure.
3. The lands do not go to the Gay Head Wampanoag Tribe but to a state corporation whose charter may be revoked at any time by the Commonwealth of Massachusetts.

A century ago, my grandfathers petitioned the Commonwealth of Massachusetts that our reservation would not be turned into a town. I now petition for my existence as a Gay Head Wampanoag. This settlement takes away all my aboriginal rights and claims to those rights. For the aforementioned reason, I again strongly urge you to vote against passage of Senate Bill # S-1452.

Respectfully submitted,
Beatrice Gentry
Beatrice Gentry

OPPOSITION TO THE GAY HEAD INDIAN LAND CLAIMS BILL

BY BARBARA B. GENTRY

Background on Wampanoag Land Settlement of Gay Head

Since the beginning of time the Aquinnah Wampanoag Tribe of Gay Head on Martha's Vineyard Island have owned and occupied our land. Our history and progress has been unique, because of the geographic isolation of not only Martha's Vineyard from the Mainland, but also the geographic isolation of Gay Head from the rest of the Island. For these and other reasons the Aquinnah Wampanoag of Gay Head are a separate, distinct, and cohesive tribe who have maintained their existence.

The town is located at the western-most tip of the Island of Martha's Vineyard. The Island is a well known summer resort with famous and weathly landowners such as Jacqueline Kennedy Onassis, who owns 1/10 of Gay Head; Mrs. Max Eastman, the widow of the famous author Max Eastman; Leon Edel, the foremost authority on Henry James; Robert Stutts and Lawerence Spitz, who are National Labor Relations Arbitrators; Lawrence Mirel, who was the lawyer for the Taxpayers Association and the son-in-law of one of the summer people, has worked as a former congressional aide; Mitchell Svirdoff, a former Vice President of the Ford Foundation (Ford Foundation funds the Native American Rights Fund who provides legal assistance to the Wampanoag Tribal Council of Gay Head); and numerous less famous wealthly lawyers, businessmen and artist who own summer homes in Gay Head. Not only do these individuals have influence and power over Gay Head but ackross the United States. Gentlemen, you must realize that 90% of the Gay Head Wampanoag tribal members are without a college degree and have no knowledge of federal legislation processes, the Federal government, and the state government. We are an unsophisticated people whose main livelihood is fishing and tourism. Our tribe has had very few dealings with the Federal government unlike Federally recognized tribes. Be aware of the fact that we are one of the few tribes that have remained on their same lands since the coming of the Pilgrims.

Nature of the Claim

The Claim of the Aquinnah Wampanoag Tribe of Gay Head is based on the Non-Intercourse Act of 1790. This provision has a restriction against the alienation of Indian lands and provides in part:

> "That no sale of lands made by any Indians, or any nation or tribe of Indians within the United States, shall be valid to any person or persons or to any State, whether having the right of pre-emption to such lands or not, unless the same shall be made and duly executed at some public treaty, held under the authority of the United States.(Act of July 22, 1790)

In 1974, the Wampanoag Tribal Council of Gay Head, Inc. filed a law suit against the Town of Gay Head demanding the return of lands which in 1870 were taken away. This lawsuit was filed for two reasons:

1. The summer residents proposed that a tennis court be built on the Cranberry lands, citing them as town-owned lands.
2. The Martha's Vineyard Conservation Society started investigating the lands in Gay Head and approached the town selectmen about giving the Cranberry lands to them for a conservtion and recreation area.

The Wampanoags protested both actions that the lands in question were owned by the tribe. But the town counsel ruled against the tribe. It was then that the Wampanoag tribal members realized that they no longer controlled their own lands or their destiny as a tribe.

Before the land suit claim the Gay Head Taxpayers Association membership was made up of both Indian and non-Indian people who owned land in Gay Head. After the land suit claim the next meeting of the Tax Payers Association was held in New York City in the Empire State Building thus eliminating all Wampanoag taxpayers out of their meetings. By holding the meeting in New York no Wampanoag could afford to attend. This Association's membership is all non-Indian because it has purposely eliminated all of its Wampanoag members thereby making it a discriminatory and racist organization. Once this organization was made up of all taxpayers now its membership consists of wealthly individuals who are doctors, lawyers, artist and businessmen.

The Settlement

The "Settlement" annihilates the Aquinnah Wampanoag Tribe of Gay Head. The "Settlement" does not represent an agreement by all concerned parties mainly the Wampanoag Tribe of Gay Head. According to Tom Tureen the NARF lawyer for the Wampanoag Tribal Council of Gay Head, Inc., it is not the governing body of the Wampanoag Tribe. Once we found out this a large number of Wampanoag tribal members withdrew from the Tribal Council. Why should we belong to an organization that does not represent the Wampanoag Tribe and has no authority over the tribal members? Furthermore, the individuals holding offices in the Wampanoag Tribal Council keep involving non-Indians in what should only be Wampanoag. They see no difference in Wampanoag business and the town of Gay Head business. Perhaps this maybe because those who hold offices in the town are also the same families who hold offices in the Wampanoag Tribal Council,Inc, and negotiated the "Settlement".

For example, the Selectman Madison is the stepbrother of the Selectman David Vanderhoop and the son of Luther Madison who is the Medicineman for the Wampanoag Tribal Council of Gay Head, Inc. Another relationship you should be aware of is Mrs. Widdiss, the President of the Wampanoag Tribal Council of Gay Head,Inc., is the Mother of Selectman Marc Widdiss and the Executive Director, Donald Widdiss,of the Wampanoag Tribal Council of Gay Head, Inc. and she is also the sister of the Chief of the Wampanoag Tribal Council of Gay Head. I am explaining these relationships because the Widdiss group is always saying that it is "Our Family" that objects to the "Land Settlement". This is untrue 3 families are going to testify on the Senate Bill number 1452. We have all paid our own expenses unlike the other people that will be testifying for the Bill.

Another problem which we have with the Wampanoag Tribal Council is the membership. As it standsnow anyone on the 1870 role is a member of the Wampanoag Tribal Council regardless of their cultural values, beliefs, and no matter how many generations they marry non-Indian. Personally, I have problems with this. How can anyone be a Wampanoag if he has not been taught our ways? A descendant because of a blood relationship but not a Wampanoag.

We feel that we have had no voice or vote in the settlement as a member of the Wampanoag Tribal member or as a citizen of the town of Gay Head and the Commonwealth of Massachusetts. Once again the Wampanoag Tribe is left out of even their own "Land Settlement". Must our history with the non-Indian keep repeating itself? Begining with the first non-Indians, we taught them how to live on our lands, we shared our foods with them, we taught them how to hunt and fish. In return we were put on reservations and then our reservation was taken away from us against our wishes and now a century later we are asked to "go along" with a settlement that truly terminates us as Wampanoags. The following are my reasons for asking the Senate Select Committee on Indian Affairs to let Senate Bill # 1452 die in Committee:

1. The tribal lands are not under control of the Wampanoag Tribe of Gay Head but a State Corporation whose charter could be revoked at anytime by the Commonwealth of Massachusetts. Plus we do not know who will be on the board of directors of the State Corporation. Will it be all Wampanoag, half Wampanoag and non-Indian, or all non-Indian? If non-Indians are on the board why should they be controlling Wampanoag when for the last ten years Indian tribes have demanded self-determination across the Nation. Yet the settlement only serves to not only put us under the control of the state, the town and the Taxpayers Association which is unheard of! We are being treated as morons. This settlement does not allow the Wampanoag tribe and its members to make its own decisions. The non-Indian is once again saying and demonstrating to the Wampanoag Trital Members that they are second class citizens who are incapable of making their own decisions.

2. This settlement document also demonstrates how afraid the non-Indian community of Gay Head is . To elaborate on this we must look to the histroy of Gay Head and the economic situation that every Wampanoag who lives in Gay Head realizes from childhood. The Summer people control the economy of the Wampanoag people. The Wampanoag people work for the summer people as caretakers during the winter months, carpenters, maids, babysitters, seamstresses, plumbers, salespeople, and tend their yards, and work for the town of Gay Head. The summer people are important to the Wampanoag people's economy. They are the "bread and butter".

3. Although Wampanoag people hold some of the town offices, they do not control the town for the following reasons:

   a. 2/3 of the voters in the town of Gay Head are non-Indian. Therefore the Wampanoag could be voted out of office or taken off any committee at the whim of the summer people.
   b. As explained the non-Indian controlls the economy of the Wampanoag and the town of Gay Head.

4. We are giving up our claims to hunting and fishing rights which every Native American tribe is attempting to retain. Why should the Wampanoag tribe give up our aboriginal rights or claims to those rights. Its inconceiveable how the Wampanoag Tribal Council could sign these away when every tribal member who lives on Gay Head hunts and fishes. Traditionally, fishing is our livelihood and our economy is built on it. In most Wampanoag homes they eat nothing but fish. Hunting and fishing are a Wampanoags way of life and we are now losing those rights because of a forced settlement that no one in the tribe is really satisfied with.

5. Another problem with the "Settlement" is the alienation of the Cook, Strock, and West basin properties. At anytime the " Land Corporation" could lose those lands. We ask that these lands have Federal protection. If not they will surely lose them. If you look at the Wampanoag Tribal Council since 1976 they have had very few grants or jobs. Between the years of 1972-76, the Tribal Council had 35 employees. If the leadership for the tribe faulters we could end up losing the lands even by the revoking of the charter of the "State Corporation". Most importantly if all the lands in the Settlement had Federal protection this would insure the lands for future generations as our grandfathers had tried to do for us.

6. In addition to alienation we also question why we have to pay fees on lands that we really already our own. All of Gay Head and part of Chilmark belonged to the Wampanoag Tribe. We lost those lands because the Commonwealth of Massachusetts turned us from a reservation to a town against our will. They took our land illegally over a century ago and now they want us to pay fees for something that we legally own that was actually stolen from us. It seems to us that it should be the other way, they should be paying fees to the Tribe.

7. On the West Basin land the town wants to build a bulk head. Why don't they build it on town land and not on Tribal land. If it is Tribal property it should be only for the Tribe. Once again we see the Tribe combining with Town business. We are two separate entities and want to remain that way.

8. If the Tribal Council is really defining all descendants as Tribal members then not every tribal member was given the opportunity to vote in the "Land Settlement". The Tribal Council has not identified all descendants . Unlike other tribal settlements like the Alaskan and Oklahoma tribes. the Wampanoag Tribal Council of Gay Head has not publicly advertised for its tribal members across the United States. This is a common practice done with many land settlement cases or before closing the roles.

In conclusion, we can only quote our great leader Mittak who said:

> "Aquinnah (Gay Head) shall always belong to the Wampanoag as it belonged to our Grandfathers."

Respectfully submitted

Barbara B. Gentry

OPPOSITION TO THE GAY HEAD LAND CLAIMS BILL
S-1452

FACT SHEET

Contrary to the information which has been disseminated concerning the Gay Head land claims, at least 100 Wampanoag Tribal members of Gay Head oppose this bill for the following reasons:

1. The Wampanoag Tribal Council of Gay Head, Inc. is not the governing body of the Wampanoag Tribe of Gay Head and does not represent all the tribal members.
2. The membership of the Wampanoag Tribal Council has changed from a tribal to a descendancy organization.
3. We extinguish our claim to our hunting and fishing rights.
4. The Strock properties are lands which we would not have access to and many sites are unbuildable according to Gay Head zoning laws.
5. The lands are not being returned to the Wampanoag tribe but to a state corporation whose charter can be revoked at any time.
6. All the lands in the settlement will not have federal protection.
7. The settlement does not provide for beaches in a membership whose main economy is fishing.
8. Alientation of the properties is included in the settlement.
9. Payment in lieu of taxes for properties that are being returned which were stolen a century ago.
10. On the West Basin land in the settlement the town is building a bulk head. With water surrounding Gay Head, why must this be done on Wampanoag lands?
11. The Tribe has no control over its lands. Any development must be approved by the Town of Gay Head during the summer months.
12. Our sacred places were not included in the settlement.

We feel that the following is essential to maintain our Wampanoag culture and identity which were excluded from the settlement:

1. Conveyance of the schoolhouse to the Tribe. (The only schoolhouse ever in Gay Head)
2. Conveyance of the Cook Property to the Tribe without restriction.
3. Conveyance of the Herring Creek as part of the Common Lands to the Tribe without restriction.
4. Conveyance of all the beaches as part of the Common Lands to the Tribe.

5. Conveyance of and access to the Gay Head Cliffs as part of the Common Lands to the Tribe consistent with exclusive right of Wampanoags to dig clay for pottery and provisions to protect and maintain this national resource from unbridled use.

6. Conveyance of, with right of access to, all the unclaimed lots in Gay Head to the Tribe.

7. Access to by Tribal members and conveyance of immediate areas surrounding Toad Rock, Elephant Roack, Ring Rock, Cooch Pond, Witch Pond, Black Brook, Solas Paul's grave, Mittark's grave, and the Gay Head Pound to the Tribe.

8. Recognition of Wampanoag hunting rights with administration by Tribe.

9. Recognition of Wampanoag fishing rights with administration by Tribe.

10. Provision to insure right of way to all lands conveved to Wampanoags in original set-off as well as restriction upon rights as non-Indians to partition and/or involuntarily convey lands from any Wampanoag who maintains an ownership interest in such original set-off lands.

11. Right of first refusal from the Town to Tribal members to redeem land put up by Town for tax sale.

12. That the provision regarding a release of all Indian claims to Gay Head land invoved in the law suit against the Town to be phrased so as not to cause any Wampanoag rights to be relinquished or impaired in any way.

13. Access to old Ancient Ways in Gay Head.

14. Land owned by the Tribe to be held without restriction.

The Wampanoag Tribal group in opposition to this bill is not seeking to obstruct or to confuse the issues, rather we hope to clarify and direct focus upon what claims, rights and intent lie at the core of Wampanoag culture here in Gay Head before they are prematurely and formally settled away.

If you have any questions concerning this fact sheet on the Gay Head land claims please contact Joan Patadal at 617-645-9900; State Road, Gay Head, Massachusetts 02535.

April 8, 1986

Chairman Mark Andrews,
and Select Committee on Indian Affairs

The World Book Encyclopedia defines the Bureau of Indian Affairs as an agency of the United States Federal Goverment, responsible for the protection and welfare of American Indians.

I am outraged that this settlement is really for the betterment of the Tax Payer Association and a few opportunist lawyers.

I feel suffocated by a group of people who are obviously more interested in having power and control.and getting only what is good for them and their future.

If this settlement passes as it is written, injustice once again will be done to the Gay Head Wampanoag people.

Thank You,

Berta Giles Welch

April 8, 1986

Chairman Mark Andrews;
and Select Committee on Indian Affairs:

I write on behalf of a group of Wampanoag Indians of Gay Head, and to make known our feelings that we are oppossed to Bill #S. 1452- to settle the Indian land claims as they now stand.

It is an unjust, unfair, and a one sided settlement. There are so many strings attached to every phase of the settlement and it is not good for our people and future generations.

Right now some of us are involved with land allotments, alloted by the state, registered in the Dukes County Court House, under Gay Head Indian Lands which we now find have no right of ways to them.

The Strock land that is discussed in the settlement does not show us how much is buildable or how much is wetlands. The Common lands will be subdivided. One of the first objections from the people of the Tax Payer Association was "no subdivision of the lands." But now these lands are to be subdivided from the beaches that abutt them.

The state has taken away fishing rights, where as, we have always been a fishing people.

May we again include the fundamental demands essential to preserve and maintain the Wampanoag Indians of Gay Head, their heritage and tradition before they are prematurely and formally settled away, by passing this bill.

Sincerely,

[illegible] Robinson

FUNDAMENTAL DEMANDS ESSENTIAL TO PRESERVE AND MAINTAIN WAMPANOAG INDIANS OF GAY HEAD HERITAGE AND TRADITION

1. CONVEYANCE OF ORIGINAL INDIAN SCHOOLHOUSE TO TRIBE.
2. CONVEYANCE OF HERRING CREEK AS PART OF COMMON LAND TO TRIBE WITHOUT RESTRICTION.
3. CONVEYANCE OF COOK PROPERTY TO TRIBE WITHOUT RESTRICTION.
4. CONVEYANCE OF ALL BEACHES AND CRANBERRY BOGS AS PART OF COMMON LAND TO TRIBE.
5. CONVEYANCE AND ACCESS TO GAY HEAD CLIFFS AS PART OF COMMON LAND TO THE TRIBE CONSISTENT WITH EXCLUSIVE RIGHT OF INDIANS TO DIG CLAY FOR POTTERY AND PROVISIONS TO PROTECT AND MAINTAIN THIS NATIONAL RESOURCE FROM UNBRIDLES USE.
6. ACCESS TO AND CONVEYANCE OF IMMEDIATE AREA SURROUNDING TOAD ROCK, ELEPHANT ROCK, RING ROCK, COOCH POND, WITCH POND, BLACK BROOK, SILAS PAUL'S GRAVE, GAY HEAD POUND, AND MITTARK'S GRAVE TO TRIBE.
7. RECOGNITION OF INDIAN HUNTING RIGHTS WITH ADMINISTRATION BY TRIBE.
8. RECOGNITION OF INDIAN FISHING RIGHTS WITH ADMINISTRATION BY TRIBE.
9. ACCESS TO OLD ANCIENT WAYS IN GAY HEAD.
10. THAT THE PROVISION REGARDING A RELEASE OF ALL INDIAN CLAIMS TO GAY HEAD INVOLVED IN THE LAW SUIT AGAINST THE TOWN TO BE PHRASED SO THAT NOT TO CAUSE ANY INDIAN RIGHTS TO BE RELINQUISHED OR IMPAIRED IN ANY WAY.
11. CONVEYANCE OF, WITH RIGHT OF ACCESS TO, ALL THE UNCLAIMED LOTS IN GAY HEAD TO TRIBE.
12. PROVISION TO INSURE RIGHT OF WAY TO ALL LANDS CONVEYED TO INDIANS IN ORIGINAL SET-OFF AS WELL AS RESTRICTION UPON RIGHTS OF NON-INDIANS TO PARTITION AND/OR INVOLUNTARILY CONVEY LANDS FROM ANY INDIAN WHO MAINTAINS ALL OWNERSHIP INTEREST IN SUCH ORIGINAL SET-OFF LANDS.
13. RIGHT OF FIRST REFUSAL FROM TOWN TO TRIBE TO REDEEM LAND PUT UP BY TOWN FOR TAX SALE.
14. LAND OWNED BY TRIBE TO BE HELD WITHOUT RESTRICTION.

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